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No.

Supreme Court, U.S.
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In the Supreme Court of the United States

October Term, 1985

CITY OF CLEVELAND HEIGHTS, *et al.*,
Petitioners,

vs.

WILLIAM H. SMITH,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

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QUESTIONS PRESENTED

1. Whether a black resident of the City of Cleveland Heights, a racially integrated community, has standing under Article III of the Constitution of the United States to assert a claim of stigmatic injury, based upon "his interest in his own self-respect, dignity, and individuality as a person in his own town," resulting from the City's adoption of a resolution that he alleges seeks to unlawfully divert other black persons seeking housing in the City to other communities, where admittedly he personally was not subject to any of the resolution's alleged infirmities.

2. Whether a black resident of the City of Cleveland Heights, an integrated community, has standing under Article III of the Constitution of the United States to assert a claim that other black persons are being denied equal housing opportunities in the City by virtue of the City's adoption of a resolution that he alleges seeks to unlawfully divert other black persons seeking housing in the City to other communities, where admittedly he personally was not denied housing within the City.

3. Whether a black person is personally denied equal treatment and thus suffers stigmatic injury as the result of the adoption of a resolution by the City of Cleveland Heights that he asserts affects "his interest in his own self-respect, dignity and individuality as a person in his own town" where there is no evidence indicating any actual denial of equal treatment, as required by the decision of this Court in *Allen v. Wright*, ... U.S. ....., 104 S. Ct. 3315 (1984).

4. Whether the decision of the Court of Appeals for the Sixth Circuit is in conflict with the decisions of this

Court in *Allen v. Wright*, ... U.S. ....., 104 S. Ct. 3315 (1984); *Heckler v. Mathews*, ... U.S. ....., 104 S. Ct. 1387 (1984); and *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464 (1982).

5. Whether there is evidence in the record to support the conclusion of the Court of Appeals that the respondent in this action was personally denied equal treatment by the City, and that he therefore has standing under Article III to claim a stigmatic injury.

PARTIES BELOW

The petitioners, City of Cleveland Heights, Richard V. Robinson, Barbara H. Roderick, Heights Community Congress and Lana Cowell were all defendants-appellees before the Court of Appeals.

The respondent, William H. Smith, was the plaintiff-appellant before the Court of Appeals.

TABLE OF CONTENTS

QUESTIONS PRESENTED I
PARTIES BELOW II
TABLE OF AUTHORITIES V
OPINIONS BELOW 1
JURISDICTION 2
CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES INVOLVED 2
STATEMENT OF THE CASE 3
ARGUMENT IN SUPPORT OF THE ALLOWANCE OF THE WRIT 7
A. Overview 7
B. *Heckler v. Mathews* 10
C. *Allen v. Wright* 11
D. *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.* 15
E. The Issue of Standing Properly Focuses on the Party Seeking Jurisdiction and Not on the Merits of the Allegations 18
F. The Record Does Not Support a Conclusion That the Stigmatic Injury Found by the Court of Appeals to Have Been Sustained by Respondent Is "Fairly Traceable" to Petitioners 19
CONCLUSION 21
APPENDIX:
Judgment Entry of the Court of Appeals for the Sixth Circuit (May 3, 1985) A1
Order of the United States District Court (December 22, 1983) A18

Order of the United States District Court (December 27, 1983) A25
Judgment Entry of the Court of Appeals for the Sixth Circuit (May 3, 1985) A26
Order of the United States Court of Appeals for the Sixth Circuit (July 12, 1985) A27
Constitution of the United States, Article III, Section 2 ..... A28
Constitution of the United States, Amendment XIII, Section 1 ..... A28
Constitution of the United States, Amendment XIV, Section 1 ..... A28
42 U.S.C.S. §3604 ..... A29
42 U.S.C.S. §3617 ..... A30
42 U.S.C.S. §1981 ..... A30
42 U.S.C.S. §1983 ..... A30
City of Cleveland Heights Resolution No. 26-1976 .... A31
Complaint for Declaratory and Injunctive Relief Filed in the United States District Court (September 12, 1980) A38

TABLE OF AUTHORITIES

Cases

Allen v. Wright, ... U.S. ....., 104 S. Ct. 3315 (1984) .....I, II, 8, 9, 11, 12, 14, 15, 20, 21

Americans United for Separation of Church and State, Inc. v. U.S. Dept. of Health, Education and Welfare, 619 F.2d 353 (3rd Cir., 1980) 15-16

Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59 (1978) 10

Flast v. Cohen, 392 U.S. 83 (1968) 15, 18

Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91 (1979) 10

Heckler v. Mathews, ... U.S. ....., 104 S. Ct. 1387 (1984) .....II, 9, 10, 11, 21

Hope, Inc. v. County of DuPage, Illinois, 738 F.2d 797 (7th Cir., 1984) 18

Jaimes v. Toledo Metropolitan Housing Authority, 758 F.2d 1086 (6th Cir., 1985) 18

Schlesinger v. Reservists Committee to Stop the War, 418 U.S. 208 (1974) 12, 16-17

Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26 (1976) 10, 18, 20

Trafficante v. Metropolitan Life Insurance Co., 409 U.S. 205 (1972) 11

United States v. Richardson, 418 U.S. 166 (1974) 17

United States v. SCRAP, 412 U.S. 669 (1973) 9

Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464 (1982) .....II, 7, 9, 15, 16, 17, 20, 21

Warth v. Seldin, 422 U.S. 490 (1975) 10
Wright v. Miller, 480 F. Supp. 790 (DC, D.C., 1979) 11
Wright v. Regan, 656 F.2d 820 (D.C. Cir., 1981) 11

Constitutional Provisions and Statutes

U.S. Const., Art. III, §2, ¶1 .....I, II, 2, 7, 8, 9, 10, 18, 21
U.S. Const., Amend. XIII, §1 ..... 2, 3
U.S. Const., Amend. XIV, §1 ..... 2, 3
42 U.S.C. §1981, Civil Rights Act of 1866 ..... 2, 3
42 U.S.C. §1983, Civil Rights Act of 1866 2
42 U.S.C. §3604, Fair Housing Act, Title VIII, Civil Rights Act of 1968 ..... 2, 3
42 U.S.C. §3617, Fair Housing Act, Title VIII, Civil Rights Act of 1968 ..... 2, 3

Rule

Supreme Court Rule 19.1 6

Ordinances and Resolutions

Resolution No. 26-1976, City of Cleveland Heights, adopted March 15, 1976, as amended November 15, 1979 .....2, 4, 7, 18
Ordinance No. 27-1976, adopted April 5, 1976, as amended by Ordinance No. 16-1983, adopted February 23, 1983 4
Ordinance No. 49-1977, adopted September 19, 1977 4
Ordinance No. 69-1977, adopted October 17, 1977 4

No.

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CITY OF CLEVELAND HEIGHTS, *et al.*,
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vs.

WILLIAM H. SMITH,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

Petitioners City of Cleveland Heights, *et al.* respectfully petition for the issuance of a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in this case on May 3, 1985.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 760 F.2d 720 and is reprinted at A1 of the Appendix to this petition. The opinion of the United States District Court for the Northern District of Ohio, Eastern Division, dated December 22, 1983, is unreported and is reprinted at A18 of the Appendix.

JURISDICTION

The judgment sought to be reviewed by the petition was rendered and entered May 3, 1985. An order denying petitioners' petitions for rehearing, and rehearing *en banc*, was entered July 12, 1985. This petition is filed within ninety days of that date. The Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES INVOLVED

Article III, Section 2, Paragraph 1, Constitution of the United States

Thirteenth Amendment, Section 1, Constitution of the United States

Fourteenth Amendment, Section 1, Constitution of the United States

42 U.S.C. §3604, Fair Housing Act, Title VIII, Civil Rights Act of 1968

42 U.S.C. §3617, Fair Housing Act, Title VIII, Civil Rights Act of 1968

42 U.S.C. §1981, Civil Rights Act of 1866

42 U.S.C. §1983, Civil Rights Act of 1866

Resolution No. 26-1976, City of Cleveland Heights, adopted March 15, 1976, as amended November 15, 1979

(Text of above provisions are in Appendix, beginning at A28.)

STATEMENT OF THE CASE

The proceedings in this case were commenced by the respondent, William H. Smith, a black resident of the City of Cleveland Heights, on September 12, 1980 on behalf of all black residents of the City.[1] (A copy of the complaint is reprinted at A38 of the Appendix.) Named as defendants were the City of Cleveland Heights an Ohio municipal corporation, Richard V. Robinson, its City Manager, Barbara H. Roderick, a former official of the City, collectively referred to hereinafter as "City,"[2] the Heights Community Congress, a private, non-profit community interest organization, and Lana Cowell, its Executive Director. All defendants are petitioners before this Honorable Court.

Respondent claimed that petitioners' conduct violated 42 U.S.C. §§3604, 3617, provisions of the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§1981 *et seq.* of the Civil Rights Act of 1866, and the Thirteenth and Fourteenth Amendments of the Constitution of the United States.

The jurisdictional statement in the complaint states that the action was filed pursuant to 42 U.S.C. §§3612, 3617 and 28 U.S.C. §§1343, 2201.

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1. One William S. Dockens was originally included as a plaintiff. Very shortly after the filing of the complaint, he indicated to his counsel a desire to be dismissed. By order dated June 5, 1981, the District Court, without objection by petitioners, ordered that he be dismissed.

2. Heights Housing Service was also named as a defendant. Heights Housing Service is not an independent agency. It is a unit of a City department, and has been so treated by petitioners.

Respondent alleged that the City, by its adoption of four housing-related ordinances and resolutions,[3] and the policies and programs promulgated and developed pursuant thereto, had undertaken a comprehensive program to encourage white persons seeking housing to move into the community, and to divert black homeseekers to other communities. He claimed a denial of equal housing opportunities for black persons seeking to move into the City, and a denial of his *intraracial* associational rights "with blacks who would otherwise take up residence in Cleveland Heights." The complaint made no reference to a claim of "stigmatic injury."

The City covers approximately 8.2 square miles and has a present population of approximately 56,000 persons. The present racial composition of the City is approximately 75% white and 25% black.

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3. Resolution No. 26-1976, adopted March 15, 1976, as amended November 15, 1979, established a positive and comprehensive "open housing" program within the City of Cleveland Heights.

Ordinance No. 27-1976, adopted April 5, 1976, as amended by Ordinance No. 16-1983, adopted February 22, 1983, provides for the elimination of practices that result in unlawful discrimination in the marketing of housing, that limit housing opportunities, and that violate the tenets of "fair housing."

Ordinance No. 49-1977, adopted September 19, 1977, prohibits the display of all types of commercial signage in single-family zoning districts.

Ordinance No. 69-1977, adopted October 17, 1977, requires the owner of any structure, including residential structures, to have said structure inspected for Building Code violations prior to the time of sale, and to obtain from the Building Commissioner what is known as a "Certificate of Inspection."

The latter two ordinances are separate and distinct from the City's efforts to promote and maintain open and fair housing. They relate to the maintenance of the community's aging housing stock, and the health and safety of the occupants of that housing, and to the preservation of the qualities of residential living.

Respondent was deposed in two sessions during October, 1980. He was again deposed on February 24, 1983. The transcripts of these depositions were filed with the District Court. During that twenty-eight month interval, his counsel engaged in very extensive and exhaustive discovery, particularly with respect to City records and documents.

Respondent purchased his own home in the City of Cleveland Heights in 1974. He admitted that he personally was not steered away from the City, or otherwise discriminated against, in his efforts to purchase a home. He knew of no black person who might have been steered away from the City by any City act, policy or practice.

Respondent testified that his street was integrated at the time he moved in and that it remained integrated. He also stated that he has had a full opportunity to associate and exchange ideas with both his black and white neighbors, and that to the extent his own schedule permitted, he had done so. To the best of his knowledge, respondent personally had never been denied the right to interact and associate with other black persons, on either a social or professional basis, by virtue of any action of the City.

The stated findings of the Court of Appeals notwithstanding, petitioners respectfully submit that nowhere in his deposition testimony does respondent state that he has suffered an injury by "stigmatization," or testify as to any fact that would support a finding that he may have suffered such an injury, or any cognizable injury, economic or non-economic. The statements contained in the majority opinion of the Court of Appeals, that the City's steering policies "stigmatize him as an inferior member of the community in which he lives," that "he is forced

to interact on a daily basis within the Cleveland Heights community under the weight of the imposed badge of inferiority," that the "City's policy directly affects Smith's interest in his own self-respect, dignity and individuality as a person in his own town," that "Smith was personally denied equal treatment within that City," and other similar statements are not supported by respondent's deposition testimony, or by the record that was considered by the District Court.[4]

The District Court, on December 22, 1983, granted petitioners' motions for summary judgment on the issue of respondent's Article III standing, finding that respondent had failed to demonstrate actual injury to himself and that he therefore lacked the requisite standing to bring his action. By order dated December 27, 1983, the District Court dismissed his action.

On May 3, 1985, the Court of Appeals reversed the judgment of the District Court, finding that respondent had sustained actual stigmatic injury and that he therefore has standing to prosecute his lawsuit. A dissenting opinion was filed by Circuit Judge Wellford. Petitions for rehearing *en banc* were denied on July 12, 1985.

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4. Petitioners, pursuant to Supreme Court Rule 19.1, made a written request to the Clerk of the U. S. District Court for the Northern District of Ohio, Eastern Division, to certify the transcripts of respondent's deposition testimony, which are a part of the record, to the Clerk of the Supreme Court. He declined to do so, stating, through a Deputy Clerk, that a Chief Deputy Clerk of the Supreme Court had advised him that Rule 19.1 notwithstanding it is the current policy of the Court, because of a shortage of filing space, not to accept such documents, unless first requested by a Justice of the Court. This policy was confirmed by a telephone conference between a Chief Deputy Clerk and one of the petitioners' counsel. *Petitioners' counsel believe that the requested portions of the record are essential to a proper understanding of the case by this Honorable Court.*

ARGUMENT IN SUPPORT OF THE ALLOWANCE OF THE WRIT

A. Overview.

In *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464 (1982), this Honorable Court stated, at 470, that it granted certiorari "[b]ecause of the unusually broad and novel view of standing to litigate a substantive question in the federal courts adopted by the Court of Appeals." Petitioners submit that the decision of the Sixth Circuit in the instant case represents a statement with respect to standing under Article III of the Constitution of the United States that it is at least as broad and novel as that presented in *Valley Forge Christian College*.

Reversing a decision of the District Court, the Court of Appeals held that respondent, a black resident of the City of Cleveland Heights, had himself sustained a "stigmatic injury" as the result of a City-adopted resolution which allegedly placed restrictions on other black persons who might potentially move into the community,[5] and that he therefore had sufficient standing under Article III to maintain his action.

The Court of Appeals found that the requirement of actual personal injury was met because the City's policy affects respondent's interest "in his own self-respect, dignity and individuality as a person in his own town." A5. It further found that the process is perceived by respon-

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5. Respondent did not pursue in the Court of Appeals his claim of standing to challenge three of the enactments challenged in the District Court. His appeal was directed solely to his standing to challenge Resolution No. 26-1976, as amended. Only that issue was briefed by the parties.

dent, as a black person, as imposing a badge or label of inferiority on him based purely on race. A5. At A5-6, the Court stated:

> . . . as a black man Smith immutably shares whatever perceived insult or indignity the City's policies pass on to black home buyers in Cleveland Heights. He lives out daily routines and neighborhood interactions as a member of a race which his own City labels as undesirable for purposes of housing policy. Smith's deposition demonstrates that this policy adds injury to insult, for the black citizen must live on a daily basis with a sense of disrespect officially established as law.

Petitioners are strong in their belief that none of these findings is supported by evidence in the record. The same is true about the conclusions reached by the Court of Appeals with respect to the City's open housing policies and programs. Indeed, the opinion makes no page reference to the record in support of said findings and conclusions.

Petitioners seek the writ of certiorari because they believe that the decision rendered by the Court of Appeals in this case is in direct conflict with the holding of this Court in *Allen v. Wright*, ... U.S. ....., 104 S. Ct. 3315 (1984), at 3327, which held that in order to have standing to litigate a claim based upon a stigmatizing injury by racial discrimination a plaintiff must have personally been denied equal treatment by the challenged discriminatory conduct. Petitioners concur with the conclusion found in the dissenting opinion of Circuit Judge Wellford that *Allen v. Wright* is authority for affirmance of the decision of the District Court, rather than for reversal. A10.

If the Sixth Circuit's interpretation of *Allen v. Wright, supra*, is to serve as a guide to Article III standing in cases

that claim stigmatic injury resulting from federal, state and local legislative enactments, then the federal courts in such cases will quickly become little more than publicly funded forums for the ventilation of grievances against actions of the legislative branch of government, and the judicial process no more than a vehicle for the vindication of the value interests of concerned bystanders. This Court has abjured such appeals for federal court jurisdiction in the past. *Valley Forge Christian College, supra,* at 473; *United States v. SCRAP,* 412 U.S. 669 (1973) at 687.

Petitioners further submit that the decision rendered by the Court of Appeals is in conflict with the several decisions of this Court which require, for standing under Article III, that a plaintiff must allege and prove that he personally has suffered, or will suffer, some actual or threatened injury as the result of the claimed illegal conduct of the defendant. This injury must be "distinct and palpable" and not "abstract," "conjectural," or "hypothetical."

Petitioners believe that although this case came before the Court of Appeals for a review of the District Court's determination that respondent lacked Article III standing, it proceeded to focus on the substantive issues raised by respondent, rather than on the issue of his own standing.

The arguments being advanced by petitioners in support of their petition are well formed by the decision of this Court in *Allen v. Wright, supra,* and by its decisions in *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., supra; Heckler v. Mathews,* ..... U.S. ....., 104 S. Ct. 1387 (1984), and the earlier Article III standing cases cited therein. It is around these three cases that petitioners' arguments will be made.

B. Heckler v. Mathews.

In *Heckler v. Mathews, supra,* appellant, a nondependent retiree, claimed that by reason of his male gender he had been subjected to unequal treatment as a result of the distribution formula contained in an amendment to the Social Security Act. He did not claim a right to any particular amount of benefits, only that his right to receive benefits be the same as those of a similarly situated woman.

In determining the issue of appellant's standing, this Court, at 104 S. Ct. 1394, citing to the case of *Gladstone, Realtors v. Village of Bellwood,* 441 U.S. 91 (1979), at 99, stated that in order to establish standing for the purposes of the constitutional "case or controversy" requirement a plaintiff "must show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant." Virtually identical statements may be found in *Warth v. Seldin,* 422 U.S. 490 (1975), at 498; *Simon v. Eastern Kentucky Welfare Rights Organization,* 426 U.S. 26 (1976), at 38; *Duke Power Co. v. Carolina Environmental Study Group, Inc.,* 438 U.S. 59 (1978), at 72. It is clear that a plaintiff must allege such a personal stake in the outcome of the controversy as to warrant *his* invocation of federal court jurisdiction under Article III.

The *Heckler* court then went on to state:

> Rather, as we have repeatedly emphasized, discrimination itself, by perpetuating "archaic and stereotypic notions" or by stigmatizing members of the disfavor group as "innately inferior" and therefore as less worthy participants in the political community, can cause serious non-economic injuries to those persons who are personally denied equal treatment solely because of their membership in a disfavored group. 104 S. Ct., at 1395. (citation deleted)

It is upon that statement, and upon the opinion of the court in *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972), that the Court of Appeals in this case found that the respondent had suffered stigmatic injury. A4. What the Court of Appeals overlooked, as the dissenting opinion points out, is that in *Heckler, supra,* the defendant claimed that he personally had been denied equal treatment. He, unlike respondent, did not claim that he had been stigmatized by virtue of the denial of equal treatment to others.

C. Allen v. Wright.

If the requirement that one claiming stigmatic injury must allege a personal denial of equal treatment was not made clear by the Court in *Heckler v. Mathews, supra,* it most certainly was by the Court's opinion in *Allen v. Wright,* ..... U.S. ....., 104 S. Ct. 3315 (1984), which was decided less than four months after *Heckler.*

The stigmatic injury claim alleged by respondents in *Allen v. Wright, supra,* is virtually the same as that being alleged by respondent in this action. As stated by the Court of Appeals in *Wright v. Regan,* 656 F.2d 820 (D.C. Cir., 1981):

> They maintain they have no interest whatever in enrolling their children in a private school. They assail only government action. The sole injury they claim is the denigration they suffer as black parents and school children when their government graces with tax-exempt status educational institutions in their communities that treat members of their race as persons of lesser worth. 656 F.2d, at 827.

The District Court, in *Wright v. Miller,* 480 F. Supp. 790 (DC, D.C., 1979) dismissed respondents' complaint for

failure of standing. Citing *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208 (1974), the Court found that they asserted no distinct, palpable and concrete injury. 480 F. Supp., at 793.

The Court of Appeals reversed the decision of the District Court, finding that respondents' claim of denigration was sufficient to support standing. This Court reversed the judgment of the Court of Appeals.

The Court considered respondents' claim from two different perspectives; as a claim to have the government avoid the violation of law alleged in their complaint, and as "a claim of stigmatic injury, or denigration suffered by all members of a racial group when the Government discriminates on the basis of race." 104 S. Ct., at 3326.

After denying standing on the basis that the Government was violating the law, 104 S. Ct., at 3326-27, the Court went on to state:

> Neither do they have standing to litigate their claims based on the stigmatizing injury often caused by racial discrimination. There can be no doubt that this sort of noneconomic injury is one of the most serious consequences of discriminatory government action and is sufficient in some circumstances to support standing. See *Heckler v. Mathews*, 465 U.S. ....., ... 104 S. Ct. 1387, ..., 79 L.Ed.2d 646 (1984). *Our cases make clear, however, that such injury accords a basis for standing only to "those persons who are personally denied equal treatment" by the challenged discriminatory conduct, ibid.* 104 S. Ct. at 3327. (emphasis added)

The Court's insistence that a plaintiff claiming a stigmatic injury must personally be subject to a denial of equal treatment is further amplified by footnote 22, which appears at 104 S. Ct. 3328. The footnote, which

related directly to respondents' second claim, which does allege a personal injury, reads in part as follows:

> Respondents' stigmatic injury, though not sufficient for standing in the abstract form in which their complaint asserts it, is judicially cognizable to the extent that respondents are personally subject to discriminatory treatment. See *Heckler v. Mathews*, 465 U.S. ....., ..., 104 S.Ct. 1387, ..., 79 L.Ed.2d 646 (1984). The stigmatic injury thus requires identification of some concrete interest with respect to which respondents are personally subject to discriminatory treatment. That interest must independently satisfy the causation requirement of standing doctrine.

In the instant case, it is clear from the record that respondent himself has sustained no injury as the result of the denial of equal treatment that he alleges exists for black persons now seeking to live in Cleveland Heights.

Respondent has admitted that he was not steered by the City when he purchased his home in 1974. He does not know the name of any black person who has been steered from the City. He resides on a racially integrated street in a racially integrated community. He interacts with both white and black persons within the community, and knows of no situation where there is not good socialization among the races within the City. He admits that to the best of his knowledge he had never been denied the right to interact and associate on a social and professional basis with other black persons because of any City act. He does not know the name of any other black person who has sustained injury by reason of any City act.

Respondent does not allege stigmatic injury in his complaint. What he does allege in paragraphs 17 and 24

is that the City has been diverting black persons away from the City, that the City's policies and programs have deprived black persons of equal housing opportunities within the City, that black residents of the City, including himself, have been denied the right to interact and associate on a business and professional basis with other black persons who would have otherwise taken up residence within the City. A42-43, A46. The record wholly fails to support respondent's claims. The record also fails to support the several conclusions made by the Court of Appeals with respect to the objectives and operation of the City's fair housing programs.

It appears that respondent seeks to do two things through his litigation. He is vocalizing a personal disagreement that he has with the City's legislative authority over how open and fair housing for all shall be achieved and maintained by the City, and he seeks to litigate on behalf of unknown black persons, both within and without the City, claims that he believes that they may have against the City.

Absent particularized injury to respondent himself, injury that is distinct and palpable, respondent does not have standing to litigate his claim in the federal courts. Petitioners believe that the Court's statement that the injury that it has outlined on respondent's behalf is not abstract stigmatic injury is simply wrong. The claimed injury is both abstract and highly speculative.

The Court of Appeals attempts to distinguish the instant case from *Allen v. Wright, supra,* at 104 S. Ct. 3315, stating that *Allen* dealt with a nationwide class action, whereas respondent's claims relate only to the community in which he lives. A6-7. Petitioners submit that there is no language in *Allen* which would limit its applicability

to cases stretching over large geographic areas. Be the area small or expansive, a party who alleges stigmatic injury must have personally been denied equal treatment by the challenged discriminatory conduct. *Allen, supra,* at 3327.

Petitioners fully concur in the analysis of the applicable law provided by Circuit Judge Wellford in his dissenting opinion, and with his disagreement with the majority of the panel. Given its clarity, and its comparative brevity, petitioners' counsel will not restate the law that is provided by the opinion.

D. Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.

The third recent decision of this Court that is particularly applicable to the decision rendered by the Court of Appeals is *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., supra,* at 454 U.S. 464 (1982). In *Valley Forge Christian College,* respondents challenged a conveyance of surplus federal real estate to a nonprofit religion-oriented educational institution operated by a religious order known as the Assemblies of God, for use for stated secular purposes. Their claims were that the conveyance violated the Establishment Clause of the First Amendment, and that its members would be denied the fair and constitutional use of their tax dollars in violation of the members' First Amendment rights.

Based upon *Flast v. Cohen,* 392 U.S. 83 (1968), the District Court granted summary judgment against respondents on the issue of their standing as taxpayers.

Upon appeal, the Third Circuit reversed. *Americans United for Separation of Church and State, Inc. v. U. S.*

Dept. of Health, Education and Welfare, 619 F.2d 352 (3rd Cir., 1980). Certiorari was granted, and the decision of the Court of Appeals was overturned. The crux of the opinion of the Court of Appeals is provided in *Valley Forge Christian College, supra*, at 482, as follows:

> Although the Court of Appeals properly doubted respondents' ability to establish standing solely on the basis of their taxpayer status, it considered their allegations of taxpayer injury to be "essentially an assumed role." 619 F.2d at 261.
>
> > "Plaintiffs have no reason to expect, nor perhaps do they care about, any personal tax saving that might result should they prevail. The crux of the interest at stake, the plaintiffs argue, is found in the Establishment Clause, not in the supposed loss of money as such. As a matter of primary identity, therefore, the plaintiffs are not so much taxpayers as separationists . . ." *Ibid.*
>
> In the court's view, respondents had established standing by virtue of an "injury in fact" to their shared individuated right to a government that "shall make no law respecting the establishment of religion." *Ibid.* The court distinguished this "injury" from "the question of 'citizen standing' as such." *Id.*, at 262. Although citizens generally could not establish standing simply by claiming an interest in governmental observance of the Constitution, respondents had "set forth instead a particular and concrete injury" to a "personal constitutional right." *Id.*, at 265.

This Court then proceeded to examine the legal reasoning of the Court of Appeals, and the inconsistency of its decision with *Schlesinger v. Reservists Committee*

to Stop the War, 418 U.S. 208 (1974) and *United States v. Richardson*, 418 U.S. 166 (1974). It concludes its analysis by stating:

> The complaint in this case shares a common deficiency with those in *Schlesinger* and *Richardson*. Although respondents claim that the Constitution has been violated, they claim nothing else. They fail to identify any personal injury suffered by them *as a consequence* of the alleged constitutional error, other than the psychological consequence presumably produced by observation of conduct with which one disagrees. That is not an injury sufficient to confer standing under Art. III, even though the disagreement is phrased in constitutional terms. It is evident that respondents are firmly committed to the constitutional principle of separation of church and State, but standing is not measured by the intensity of the litigant's interest or the fervor of his advocacy. "[T]hat concrete adverseness which sharpens the presentation of issues," *Baker v. Carr*, 369 U.S., at 204, is the anticipated consequence of proceedings commenced by one who has been injured in fact; it is not a permissible substitute for the showing of injury itself. 454 U.S., at 485-86.

The Court's analysis is equally applicable to the statutory and constitutional claims being made by respondent in this action, and should have dictated to the Court of Appeals a similar result.

As the Court stated in *Valley Forge Christian College, supra*, at 483:

> . . . assertion of a right to a particular kind of Government conduct, which the Government has violated

by acting differently, cannot alone satisfy the requirements of Art. III without draining those requirements of meaning.

E. The Issue of Standing Properly Focuses on the Party Seeking Jurisdiction and Not on the Merits of the Allegations.

The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated. *Flast v. Cohen,* 392 U.S. 83 (1968), at 99; *Simon v. Eastern Kentucky Welfare Rights Organization, supra,* at 426 U.S., at 38. In *Hope, Inc. v. County of DuPage, Illinois,* 738 F.2d 797 (7th Cir., 1984) (en banc), the Court restated this principle in a way that is particularly appropriate to petitioners' case:

> . . . standing does not necessarily flow from the validity of the plaintiff's contention on the merits, rather the focus is on the plaintiff and whether he or she has alleged and proven facts necessary to meet the minimum constitutional requirements of standing. 738 F.2d, at 804.

The Sixth Circuit embraced this statement in *Jaimes v. Toledo Metropolitan Housing Authority,* 758 F.2d 1086 (6th Cir., 1985), a case that was decided only six weeks before petitioners'.

The Court of Appeals makes reference to the principle in its decision. A6. Yet it is clear from the opinion that its focus is indeed upon the merit of respondent's contentions about Resolution No. 26-1976, and not upon the standing of the respondent himself.

In the very first paragraph of its opinion, the Court of Appeals states as a given that petitioners are engaged in

racial steering practices. A2. It states that the City's programs are designed to control the City's racial composition and to freeze existing integration by steering white home buyers to the community and black home buyers away from the community. A2-3. It appears that the Court was more concerned with the validity of the City's fair housing legislation than it was with whether respondent himself had suffered injury as the result of the legislation, and that standing was found in order that the federal courts might be able to consider the constitutionality and lawfulness of the City's policies and programs. Petitioners submit that the dissenting opinion of Circuit Judge Wellford properly has its focus on the standing of the respondent.

F. The Record Does Not Support a Conclusion That the Stigmatic Injury Found by the Court of Appeals to Have Been Sustained by Respondent Is "Fairly Traceable" to Petitioners.

Before concluding, one additional point must be made with respect to the opinion of the Court of Appeals, and the petition before this Court.

After finding that respondent has sustained stigmatic injury as the result of petitioners' actions, the Court quickly finds that respondent's stigmatization is "fairly traceable" to the housing policies of petitioners and that the injunctive relief sought by him would erase the source of respondent's stigmatic injury. A8-9. Petitioners respectfully submit that the record in this case contains no evidence that would support either conclusion.

Respondent himself knows of no black person who has been steered away from Cleveland Heights by any City acts. There is nothing in the record to indicate that

such a black person in fact exists, or that if such a person does in fact exist, that he or she would have otherwise been able to have moved into the City. Absent such evidence, there is no way that the determinations made by the Court of Appeals can be supported. *Allen v. Wright, supra,* at 104 S. Ct., at 3325; *Valley Forge Christian College, supra,* at 454 U.S., at 472; *Simon v. Eastern Kentucky Welfare Rights Organization, supra,* at 426 U.S. 38, 41.

CONCLUSION

Petitioners urge this Honorable Court to grant this petition and to resolve an apparent conflict between this decision by the Court of Appeals for the Sixth Circuit, and the decision of this Court in *Allen v. Wright, Heckler v. Mathews,* and *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.,* as to what must be demonstrated by one seeking Article III standing based upon a claim of stigmatic injury as the result of alleged racial discrimination.

Respectfully submitted,

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APPENDIX

JUDGMENT ENTRY OF THE COURT OF APPEALS FOR THE SIXTH CIRCUIT

(Filed May 3, 1985)

No. 84-3099

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WILLIAM H. SMITH,
Plaintiff-Appellant,

v.

CITY OF CLEVELAND HEIGHTS, *et al.*,
Defendants-Appellees.

On Appeal from the United States District Court for the Northern District of Ohio.

Before: MERRITT and WELLFORD, *Circuit Judges;* HILLMAN, *District Judge**

MERRITT, *Circuit Judge,* delivered the opinion of the Court, in which HILLMAN, *District Judge,* joined. WELLFORD, *Circuit Judge,* (pp. 10-16) delivered a separate dissenting opinion.

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*The Honorable Douglas W. Hillman, Judge of the United States District Court for the Western District of Michigan, sitting by designation.

MERRITT, *Circuit Judge.* The plaintiff in this housing discrimination action alleges that the racial steering practices of defendants, city of Cleveland Heights and nonprofit neighborhood association, Heights Community Congress, violate both his statutory and constitutional rights under the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3604, the Thirteenth and Fourteenth Amendments, and §§ 1981, 1982, 1983, 42 U.S.C. The issue on appeal is whether plaintiff Smith, a black resident of the integrated Cleveland Heights community who was not himself steered from the City, has standing to pursue the action. The District Court held that Smith had demonstrated no "actual injury" sufficient to satisfy the requisites of standing, both because Smith had not been steered and because his rights to associate freely with other blacks had not been impaired; the court granted the defendants' motion for summary judgment and dismissed the action. Dist. Ct. Op. at 6-7. We hold that plaintiff satisfied the standing requirements reaffirmed by the Supreme Court in *Allen v. Wright,* ..... U.S. ....., 104 S.Ct. 3315 (1984). We, therefore, reverse the judgment of the District Court and remand for further proceedings on the merits.

Cleveland Heights is a racially integrated community covering 8.2 square miles contiguous to and east of Cleveland, Ohio, with a population of approximately 60,000 persons. The racial composition of this population is approximately 75% white and 25% black. Since 1976 the City, allegedly, has developed municipal policies to control the City's racial composition and to maintain the racial percentages at 75% white and 25% black. The City's programs, designed to freeze existing integration by steering white home buyers to the Cleveland Heights housing mar-

ket and black home buyers away from the area,[1] are incorporated in Resolution 26-1976, which outlines specific means to create incentives for real estate agents to perform the desired steering. Plaintiff Smith alleges that these official municipal programs violate both his statutory rights under the Fair Housing Act and his constitutional rights under the Thirteen and Fourteenth Amendments and 42 U.S.C. §§ 1981, 1982, and 1983.

In order to establish his standing to bring this action, Smith must satisfy a three part test. He must show that (1) he has suffered a personal injury, (2) the injury is fairly traceable to the defendant's challenged conduct, and (3) the injury is likely to be redressed by the judicial relief sought. *Allen v. Wright*, 164 S.C. at 3325 (quoting *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982)). These three elements comprise the "core constitutional" standing requirements which the Supreme Court has determined are mandated by the "case and controversy" language of Art. III of the Constitution. *Id.*

Smith alleges injury for standing purposes on two bases. First, Smith argues that the steering policies stigmatize him as an inferior member of the community in which he lives: that by effectively limiting other blacks' access to Cleveland Heights, the municipal policies brand

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1. Such policies are often referred to as "benign steering programs." *See* Note, *Benign Steering and Benign Quotas: The Validity of Race-Conscious Government Policies to Promote Residential Integration*, 93 HARV. L. REV. 938 (1980). They are to combat "white flight," which refers to white residents' rapid migration from neighborhoods that become integrated, and "tipping," the point at which the rising percentage of black residents in formerly all-white neighborhoods precipitates rapid and widespread white migration. These steering programs are of relatively recent origin; their constitutionality has yet to be resolved.

black residents as less desirable than whites. Smith moved into Cleveland Heights in 1974, two years before the City's governing body first passed Resolution 26-1976, and was not himself subject to any steering practices when he purchased his home. Nevertheless, he asserts that he is forced to interact on a daily basis within the Cleveland Heights community under the weight of this imposed badge of inferiority.

Second, Smith asserts that the City's official programs effectively have denied his associational rights. He does not deny that the integrated nature of his community affords him opportunity to associate with other blacks who live there now. He alleges that his associational rights have been impaired, however, by the official manipulation of Cleveland Heights' housing market in the sense that he has been denied the chance to associate freely with other black residents who would have purchased homes in Cleveland Heights but for the steering policies.

We accept Smith's first argument. Smith correctly argues that noneconomic "stigmatic" injury supports standing. *See Heckler v. Matthews*, 465 U.S. ....., 104 S.Ct. 1387, 1395 (1984); *Trafficante v. Metropolitan Life Ins.*, 409 U.S. 205, 208 (1972). *See also Sierra Club v. Morton*, 405 U.S. 727, 734-35 (1972) (noneconomic aesthetic and environmental injuries can support standing). He argues further that his stigmatic injury is linked directly to the racial steering policies of Cleveland Heights and Heights Community Congress, and that the injunction which he seeks would fairly redress his injuries. Under the Supreme Court's interpretation of "core constitutional" standing requirements recently restated as a three-prong test in *Allen v. Wright, supra*, the above allegations, documented in plaintiff's complaint and the depositions, demonstrate Smith's standing to pursue this action.

We note at the outset of this analysis that standing has been a peculiarly malleable doctrine through the years, expanding or contracting to fit the temper of prevailing judicial philosophy. *See* K. DAVIS, ADMINISTRATIVE LAW TREATISE § 24:1 at 208-11 (1983). The significant fluctuations in the doctrine's boundaries have been the source of criticism. *Id.*

The uncertainty of the doctrine's outer limits does not affect its application here, for the plaintiff alleges facts placing him within the doctrine's confines. First, as to Smith's allegation of stigma, the requirement of actual personal injury is met. The City's policy directly affects Smith's interest in his own self-respect, dignity and individuality as a person in his own town. Smith is a black resident of Cleveland Heights. His city, he claims, has adopted an official poilcy to deter other members of Smith's race from residing in his community. Smith is therefore a member of a group of people whom the City, regardless of the reason, has characterized as undesirable beyond a certain percentage or number.

This process is not color blind and is perceived by Smith as a black person as imposing a badge or label of inferiority on him based purely on race. The City is essentially saying that, although Smith's presence in the community may not be undesirable, the presence of any more members of Smith's race is undesirable. The record supports Smith's claims in this respect. Regardless of the City's status quo position that Smith himself may remain because he is within the desired percentage of black residents, as a black man Smith immutably shares whatever perceived insult or indignity the City's policies pass on to black home buyers in Cleveland Heights. He lives out daily routines and neighborhood interactions

as a member of a race which his own City labels as undesirable for purposes of housing policy. Smith's deposition demonstrates that this policy adds injury to insult, for the black citizen must live on a daily basis with a sense of disrespect officially established as law.

It is true that the City's motive for this unequal treatment may be benign—that is, to ensure stable integration and cultural diversity for the benefit of all Cleveland Heights residents. This factor may be relevant to the merits of the action in, for example, an anlysis of the goals of the Fair Housing Act or in a constitutional analysis using a balancing test of individual injury versus state interest. But it is not a relevant factor in deciding the threshold standing issue. *See Warth v. Seldin*, 422 U.S. 490, 500 (1975) (stating that "standing in no way depends on the merits").

The stigma in his own community on which Smith relies is far from the "abstract stigmatic injury" or generalized insult found insufficient for standing purposes in *Allen v. Wright*, 104 S.Ct. at 3327. In *Allen*, plaintiffs were parents of black public school students who callenged IRS standards and procedure for denying tax-exempt status to private schools that discriminated on the basis of race. In this taxpayer standing case, the parents essentially charged that the federal government was not being sufficiently vigilant in enforcing denials of tax-exempt status to racially discriminatory private schools. There was not, as here, an official government policy that directly discriminated on the basis of race in a discrete community.

Justice O'Connor, writing for the Court, emphasized the generality of the plaintiffs' injury and likened the plaintiffs' stigma to one potentially suffered by a resident

of Hawaii on the basis of government support of discriminatory schools in Maine. Recognizing standing, she wrote, would mean that it would "extend nationwide to all members of the particular racial groups against which the Government was alleged to be discriminating by its grant of a tax exemption to a racially discriminatory school, *regardless of the location of that school.*" *Id.* at 3327 (emphasis supplied).

Smith's situation is in sharp contrast. Smith's relationship to the source and situs of his injury is far from attenuated or generalized. The source of his injury is a local governmental policy tailored expressly to shape the racial composition of his community. The situs is the very community in which he lives. These direct and concrete connections demonstrate that Smith's injury is "peculiar to himself or to a distinct group of which he is a part," *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 100 (1979), and that he is "personally subject to the challenged discrimination." *Allen*, 104 S.Ct. at 3327.

That the locus of Smith's alleged harm is a city rather than an apartment complex or discrete neighborhood within the city by no means defeats Smith's standing. In the analogous context of cases alleging infringement of associational interests under the Fair Housing Act, the Supreme Court has stated that ascertaining an affected area for purposes of defining cognizable injury is a case-by-case proposition and that "genuine injury should be ascertainable on the basis of discrete facts presented at trial." *Gladstone*, 441 U.S. at 114. When it is a municipality's city-wide policies that are at issue, rather than those of a private realtor functioning in various areas of a municipality, and when the city is a relatively compact 8.2 square miles with 60,000 residents, the stigmatic injury

suffered by its black residents is "distinct and palpable." *Warth v. Seldin*, 422 U.S. at 501.

Finally, the language in *Allen v. Wright* that the plaintiff must allege "stigmatic injury suffered as a direct result of having personally been denied equal treatment," 104 S.Ct. at 3327, does not dictate a different result here. That the City's alleged policy denies equal treatment is obvious. It creates a favored class based solely on race. Because a race-conscious policy favoring prospective white residents was applied throughout the City, Smith was personally denied equal treatment within that City. White residents of Cleveland Heights were not forced to shoulder the burden of belonging to a race disfavored for purposes of their City's housing policies; Smith was required personally and directly to bear this burden. No badge of disrespect follows white residents as they follow their daily routines. The City tells Smith it does not want his friends and relatives, even his children, to enter as homeowners. It says, as he perceives it, "we will tolerate you but want no more like you." White residents do not have to live with that official inscription on the courthouse door. For Smith that inscription written into law over the door of his town is an injury. His sense of community is deeply offended because the doorway to his town is an extension, in a symbolic way, of his own doorway.

The second prong of the standing test is met here, since Smith's stigmatization is "fairly traceable" to the housing policies of the defendants. Defendant City of Cleveland Heights does not deny administering the challenged programs through the Heights Housing Service, an arm of the local government. Defendant Heights Community Congress argues forcefully that none of Smith's alleged injuries are fairly traceable to its conduct,

since its contractual relationship with the City is presently limited to activities unrelated to steering and race-conscious housing programs. Smith's complaint alleges that, regardless of any formal contractual arrangement, Heights Community Congress directly participates in steering blacks to areas outside of Cleveland Heights and whites to areas within. The complaint sufficiently establishes Smith's standing to sue the community organization; whether the facts will later sustain the allegations is an issue to be decided on the merits.

The third standing prong is also met, since the injunctive relief sought by Smith would remove the official implementation of the race-conscious programs. Such a removal would erase the source of Smith's stigmatic injury.

The District Court decided the standing issue relative to the Fair Housing Act; our analysis in this case similarly has related to the Article III minimum requirements of injury in fact which the Supreme Court has determined are the sole standing requirements under the Fair Housing Act. *Gladstone*, 441 U.S. at 109; *Accord, Havens Realty Co. v. Coleman*, 455 U.S. 363, 372 (1982). Smith's additional claims of standing relative to his constitutional claims satisfy the Court's prudential limitations in adjudicating cases. *See Warth v. Seldin*, 422 U.S. at 499-501. First, prudential limitations have been held to bar a plaintiff who has established constitutional injury in fact from asserting "the legal rights or interests of third parties." *Warth*, 422 U.S. at 499 (citations omitted). Such a limitation is irrelevant here, since Smith is asserting his own rights. Second, the Supreme Court has applied prudential principles to limit suits by plaintiffs asserting a " 'generalized grievance' share in substantially equal measure by all or a large class of citizens." *Warth*, 422 U.S. at 499. We are dealing here with a limited and identifiable

set of injured citizens—the approximately 15,000 black residents of Cleveland Heights. The grievance asserted is specific and immediate to that contained group. Finally, prudential principles preclude suit unless "those litigants best suited to assert a particular claim" are asserting their rights. *Gladstone*, 441 U.S. at 99. Smith is asserting rights as a resident personally and directly stigmatized by his City's race-conscious policies. Given the immediacy of the injury to Smith's dignity and self-respect as a black citizen of Cleveland Heights, he is a suitable plaintiff. He has a stronger interest to sue than a black nonresident homeowner steered elsewhere or a white home buyer invited to move to Cleveland Heights.

Because Smith's stigmatic injury is sufficient to support a finding of standing, we need not decide whether his alleged associational interests would independently support his standing. Although the merits of this case may prove difficult to resolve, the threshold standing issue before us is quite clear. Plaintiff is not constrained to prove his case on the merits in order to surmount a standing hurdle. *Warth*, 422 U.S. at 500. Meeting the three prong test articulated in *Allen v. Wright* suffices to prove standing. Taking the complaint and depositions together, *See Gladstone*, 441 U.S. at 115, we find that Smith has demonstrated standing sufficient to maintain the action.

Accordingly, the judgment of the District Court is reversed.

WELLFORD, *Circuit Judge*, dissenting. I would affirm the order granting defendants' motion for summary judgment for the reasons stated by District Judge Bell, holding that plaintiff Smith has "not shown an actual injury as required" to establish standing.

Applying the standing criteria set forth above it is clear that Smith has not shown an actual injury as required by *Gladstone Realtors v. Village of Bellwood, supra.* Smith's own statements demonstrate that he was not personally steered away from Cleveland Heights when he purchased housing. In addition, he admits that he has not lost any of the social benefits of interracial living in his neighborhood. Hence, he is prevented from establishing standing for some claimed injury which may or may not occur to other individuals living in the Cleveland Heights area. Therefore, the court concludes that the plaintiff lacks the requisite standing to bring this action.

The allegation of racial steering in Cleveland Heights was also the subject of a suit brought before the Honorable William K. Thomas. *Heights Community Congress v. Hilltop Realty, Inc.*, C79-422 (N.D. Ohio, December 31, 1980). In that action, Judge Thomas has to determine the standing of several individual plaintiffs. The court found that several individual plaintiffs lacked standing because they failed to demonstrate any actual injury. As with Smith, the individual plaintiffs which lacked standing in *Heights Community Congress v. Hilltop Realty, Inc., supra,* at 24-29, lived in an integrated neighborhood and were not personally deprived of the ability to interact with members of various racial backgrounds.

Order, Jt. App. 36, 37.

This court recently had occasion to consider a similar standing issue in *Jaimes v. Toledo Metropolitan Housing Authority,* Nos. 83-3443/3472/3561 Slip op. (6th Cir. March 25, 1985), a case also involving claims under like provisions of the Fair Housing Act and the Civil Rights Act as

here asserted. Because plaintiffs in *Jaimes* had failed to show personal injury in fact (failed to assert a personal stake in the outcome of the controversy), and failed to establish that the injury claimed could be directly attributed to the defendants' actions or that the relief requested would likely redress the general injury claimed, they lacked standing to pursue certain alleged claims of racial discrimination. These same standing requirements apply to plaintiff Smith. *See generally Allstate Insurance Co. v. Wayne County,* No. 84-1279 (6th Cir. 1985) (not yet filed).

The majority first made reference to *Allen v. Wright,* 104 S.Ct. 3315, *reh'd denied,* 105 S.Ct. 51 (1984), as a basis for holding that plaintiff has standing. That case, however, held that parents of black school children in a broad class action alleging racially discriminatory action by the Internal Revenue Service did *not* have standing to challenge the procedures in question. The complaint in *Allen* was that the actions of the I.R.S. encouraged and supported the expansion of racially segregated private schools at the expense of desegregated public schools and barred their children's opportunity for desegregated education in violation of the Constitution and civil rights laws. The Supreme Court *reversed* the Court of Appeals' holding in *Allen* that plaintiffs' had standing to pursue a claim of injury of "denigration they suffer as black parents and school children when their government graces with tax-exempt status educational institutions . . . that treat members of their race as persons of lesser worth." 656 F.2d 820, 827. It seems to me that Smith's claims here of a stigma by reason of alleged governmental racial steering, which does not directly affect him or his neighborhood, is akin to the plaintiffs' claim in *Allen* of denigration by reason of alleged governmental favoritism of non-segregated

education which did not directly impact upon plaintiffs' public schools.[1] *Allen* is authority for affirmance, then, rather than for reversal.

> "[A]ssertion of a right to a particular kind of Government conduct, which the Government has violated by acting differently, cannot alone satisfy the requirements of Article III without draining those requirements of meaning."

104 S.Ct. at 3327 (quoting *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 483 (1982)).

The majority opinion cites *Heckler v. Matthews*, 104 S.Ct. 1387 (1984), as holding that noneconomic "stigmatic" injury supports standing. It fails to note, however, that the later *Allen* decision makes it clear that such "noneconomic stigmatic" injury provides a basis for standing *"only* to those persons who are *personally* denied equal treatment by the challenged discriminatory conduct." 104 S.Ct. at 3327 (emphasis added). Unlike the plaintiff in *Heckler*,[2] Smith here admits that he was not the subject of the alleged discriminatory steering; he was not personally denied equal treatment insofar as housing is concerned. His claimed stigmatic injury pertains to 'vindication of the value interests of [a] concerned bystander." *See United States v. SCRAP*, 412 U.S. 669, 687 (1973). He suffers

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1. Justice O'Connor characterizes the plaintiffs claim in *Allen* as a claim of "stigmatic injury." 104 S.Ct. at 3326. She held, however,

> Neither do they have standing to litigate their claims based on the stigmatizing injury often caused by racial discrimination.

104 S. Ct. at 3327.

2. Justice Brennan, author of the unanimous decision in *Heckler v. Matthews*, dissented in *Allen*.

from an indirect, abstract type of injury caused by reason of the fact that other blacks allegedly were steered away from his city of residence. His deposition testimony indicated that he enjoyed on his block and on his street good "socialization" and interracial "communication." He admitted, in effect, that he *personally* had not been deprived of this "socialization" between blacks and whites in the City of Cleveland Heights. He has not alleged such a *personal stake* in respect to the alleged steering controversy to satisfy standing under the *Warth v. Seldin* analysis, which was reiterated in *Allen.*

Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205 (1972), cited also by the majority, involved a Civil Rights Act of 1968, 42 U.S.C. § 3604, claim by two tenants that the owner of a single apartment unit had discriminated against nonwhite rental applicants resulting in a stigmatic type of injury to the plaintiffs as residents. This case seems distinguishable as bearing upon discriminatory acts in one apartment complex; the Court held that plaintiffs had standing "as tenants of the *same housing unit* that is charged with discrimination," 409 U.S. at 209 (emphasis added), who claimed the personal loss of "interracial associations." 409 U.S. at 210. Standing in *Trafficante* came only from the plaintiffs' roles as tenants in the same housing unit where alleged racial discrimination existed. The case is therefore not authority to provide standing for Smith who admitted there was no problem with interracial association in his block and on his street in Cleveland Heights.

In addition, the majority cites *Sierra Club v. Morton*, 405 U.S. 727 (1972), as supporting its holding. Again, I see no valid basis in that decision for support of the majority view. That case held that plaintiffs had no standing to complain about governmental action which

allegedly would "destroy or adversely affect the scenery, natural and historic objects and wildlife" of a given area, which action would "impair the enjoyment of the park." 405 U.S. at 734. Despite the allegation of this "injury in fact," which the court conceded may exist, it held:

> But the 'injury in fact' test requires more than an injury to a cognizable interest. It requires that the party seeking review be *himself* among the injured.

405 U.S. at 735 (emphasis added). Thus, despite the allegation of harm to its vital environmental interests in the area allegedly harmed, the Supreme Court denied the Sierra Club standing to sue.[3] The Court cited *Sierra Club* as a basis for its "personal stake" standing requirement in *Warth v. Seldin*, 422 U.S. at 500.

Warth v. Seldin involved a claim of exclusion from a town of a discrete group based on alleged discrimination; but the complaint there, like that of Smith here, involved an allegation that "they [the plaintiffs] have been harmed indirectly by the exclusion of others." 422 U.S. at 514. The attempt in this case to "raise putative rights of third parties," allegedly steered from Cleveland Heights, should fail just as the efforts of the plaintiffs in *Warth* failed to meet well-settled standing criteria. *Id.; See also HOPE, Inc. v. County of DuPage*, 738 F.2d 797 (7th Cir. 1984) (*en banc*).

Gladstone Realtors v. Village of Bellwood, 441 U.S. 91 (1979), also involved a claim under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601-3631. There, two real estate firms and their employees were charged with racial steering in Bellwood, a suburb of Chicago. Four

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3. It should be noted that Justice Brennan, the author of *Heckler v. Matthews*, also dissented in *Sierra Club*.

of the individual plaintiffs lived in the "target area" alleged to be the scene of the racial steering, and they claimed that the challenged practices deprived them of "benefits of living in an integrated society." 441 U.S. at 111. Reading the complaint to apply only to the "carefully described neighborhood in Bellwood in which four of the individual [plaintiffs] reside," it was held that this was sufficiently close to the situation in *Trafficante* to establish standing, 441 U.S. at 113, because it was a "relatively compact neighborhood." *Id.* at 114. At the same time, the Court in *Bellwood* recognized that a "neighborhood" may be so "extensive," or "lacking in shared social and commercial intercourse," that there would be no "actual injury to a particular resident."[4] *Id.* Here again, I find that the facts as developed in this case are not comparable to *Trafficante* or *Bellwood* as to confer standing on Smith, who has admitted that the number of blacks with whom he seeks association has increased since the date of the alleged discriminatory actions of Cleveland Heights. Unlike the case in *Bellwood,* plaintiff could not identify any particular act of alleged steering whereby anyone he knew or with whom he wished to associate was directed away even from Cleveland Heights, much less from his block or his street or any compact neighborhood. He did not, furthermore, assert denial of the benefits of interracial

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4. In *Havens Realty Corp. v. Coleman,* 455 U.S. 363, 377 (1982), Justice Brennan observed:

> Our cases have upheld standing based on the effects of discrimination only within a relatively compact neighborhood. *Bellwood,* 441 U.S. at 114. We have not suggested that discrimination within a single housing complex might give rise to 'distinct and palpable injury', *Warth v. Seldin,* 422 U.S. at 501, throughout a *metropolitan area.* (Emphasis added.)

Cleveland Heights clearly is a metropolitan area in which a party in plaintiff's position would not have standing to assert a claim regarding the city's alleged practices.

association; he complained about alleged interference with his association with more black persons. This claim is different from the one made in *Trafficante* or *Bellwood*.[5] *See Munoz-Mendoza v. Pierce*, 711 F.2d 421, 428 (1st Cir. 1983).

As in *Allstate Insurance Co. v. Wayne County*, I also find Smith's claim, under the circumstances, to fail for prudential reasons. It is simply too remote and too speculative. For the additional reasons stated, I respectfully dissent from the decision to reverse the judgment of the district court.

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5. In *Bellwood*, the complaint was that defendants' actions were segregating a neighborhood, bringing in more blacks.

ORDER OF THE UNITED STATES DISTRICT COURT

(Filed December 22, 1983)

Case No. C80-1695

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

WILLIAM H. SMITH,
Plaintiff,

v.

CITY OF CLEVELAND HEIGHTS, *et al.*,
Defendant.

ORDER

This action was filed by plaintiff William H. Smith (hereinafter Smith) on September 12, 1980 against the City of Cleveland Heights, the Heights Community Congress and its Executive Director Lana W. Cowell. Smith has alleged that the defendants initiated and implemented comprehensive housing legislation and a housing program which "racially steers" blacks from Cleveland Heights and actively solicits whites to purchase homes within the city. Smith contends that in promoting the above practice the defendants have violated the Fair Housing Act, 42 U.S.C. §3604 *et seq.*, the Civil Rights Act of 1866, 42 U.S.C. §§1981, 1982 and 1983 and the Thirteenth and Fourteenth Amendments to the Constitution. Jurisdiction is asserted under 42 U.S.C. §3612 and 28 U.S.C. §§1343 and 2201.

Currently before the court are the defendants' motions to dismiss or in the alternative for summary judgment. Each defendant has asserted that Smith lacks the requisite standing to bring this action, thereby requiring dismissal of this action.

When considering the standing of a plaintiff in a fair housing case, the trial court must accept as true the facts contained in the various discovery material which includes the deposition of the plaintiff. *Gladstone Realtors v. Village of Bellwood,* 441 U.S. 90, 109 n.22 (1979); *Heights Community Congress v. Hilltop Realty, Inc.,* C79-422 (N.D. Ohio, December 31, 1980). In addition, all of the material allegations in the pleadings must be construed in a manner most favorable to the non-moving party. *Warth v. Seldin,* 422 U.S. 490, 501 (1975). Accordingly, a summary of the evidence relevant to a determination of the issue of standing follows.

Smith is a black attorney currently employed by East Ohio Gas Company, and for approximately the past thirteen years he has resided in the Cleveland, Ohio area. In 1974 Smith purchased a home in Cleveland Heights, Ohio, a suburb of Cleveland, which has a population of 56,438 according to the 1980 Census conducted by the United States Department of Commerce.

Prior to purchasing this home, Smith employed both white and black real estate agents to assist him in finding a house. During this period, Smith was shown homes in his price range by both agents throughout the eastern region of Cleveland and its suburbs including Cleveland Heights. When questioned about his experience in purchasing his Cleveland Heights' home, Smith answered as follows:

Q. And you did not feel that you were steered, in any way, by either the white or the black agent?

A. Correct.

Q. Did the white agent show you homes in the traditional white eastern suburbs?

A. Yes.

Q. And did the black agent show you homes out there, also?

A. Yes.

Q. Did they both show you homes within your price range?

A. Yes.

In addition to his admission that he was not personally steered away from Cleveland Heights, Smith has admitted that he knows of no blacks which may have been steered away from Cleveland Heights by the defendants. In his deposition Smith responded to the assertion in his complaint of racial steering as follows:

Q. Go down to Paragraph 22. Do you know the name of any black person who attempted to purchase a home in Cleveland Heights but was detoured from purchasing a home in Cleveland Heights by virtue of any act, policy or practice of the City of Cleveland Heights?

A. No.

Smith Deposition of February 24, 1983 at p. 64. Later in the same deposition, the plaintiff stated:

Q. And again your statement would be that you do not know the name of any black person . . .

A. That's correct.

Q. Who was diverted from the purchase or rental of housing in the City of Cleveland Heights through any legislative enactment, policy, or practice of the City of Cleveland Heights, is that correct?

A. That's correct.

Smith Deposition of February 24, 1983 at p. 65.

The street on which Smith's house is located is, by the plaintiff's admission, an integrated street and has been integrated since he purchased his home. However, Smith is unaware of the racial make-up of the other streets in the neighborhood in which he resides. When questioned concerning his ability to interact on his street, the plaintiff stated as follows:

Q. With respect to your block, and generally with respect to your street, would you say that the opportunity for socialization, for communication between blacks and whites, and between blacks and blacks, and whites and whites, between all races is the same as it was at the time of your deposition in October of 1980?

A. Yes.

Q. You still have good opportunities to meet and talk and associate with persons of all races in your block and on your street; is that correct?

A. Yes.

Q. Do you do so?

A. Yes.

Smith Deposition on February 24, 1983 at p. 13. Later in this deposition the plaintiff stated the following:

Q. Let me ask you this: Do you know of any situation where good socialization among the races has not been available in the City of Cleveland Heights from the time that you gave your last deposition to day?

A. Sure do.

Q. Among you personally?

A. Not me personally . . .

Smith Deposition on February 24, 1983 at p. 15.

According to Smith's deposition, he was not required to fund the expense of prosecuting this action. Instead the funding for this Litigation has been provided by the Ohio Association of Realtors.

The Supreme Court has defined the constitutional limits on a plaintiff's standing to assert an action under the Fair Housing Act as follows:

> In order to satisfy Art. III, the plaintiff must show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant.

Gladstone Realtors v. Village of Bellwood, supra at 99 citing *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 72 (1978); *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 260-261 (1977); *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 38 (1976); *Warth v. Seldin, supra*, at 499; *Linda R S. v. Richard D.*, 410 U.S. 614, 617 (1973). Accordingly, in order for Smith to have standing to bring this action it must be asserted that he has suffered an injury "that is peculiar to himself or to a distinct group of which he is a part." *Gladstone, Realtors v. Village*

of Bellwood, supra, at 100. Accord, *Havens Realty Corp. v. Coleman,* 455 U.S. 363, 372 (1982). Therefore, Smith must be pressing "his own legal interests rather than those of third parties." *Ibid.* Accord, *Warth v. Seldin, supra,* at 499; *Arlington Heights v. Metropolitan Housing Dev. Corp., supra,* at 263.

The plaintiff in this action has alleged that as a result of legislation enacted by the City of Cleveland Heights, blacks have been steered away from obtaining housing within the community. In order to demonstrate the requisite standing, Smith must show that either he was personally steered away from Cleveland Heights or that he has personally suffered some injury as a result of the alleged racial steering. The injury which Smith alleges that he has personally suffered is that the defendants' conduct has deprived him of the ability to interact with and associate with on a social and professional basis with blacks who would otherwise take up residence in Cleveland Heights.

Applying the standing criteria set forth above it is clear that Smith has not shown an actual injury as required by *Gladstone Realtors v. Village of Bellwood, supra.* Smith's own statements demonstrate that he was not personally steered away from Cleveland Heights when he purchased housing. In addition, he admits that he has not lost any of the social benefits of interracial living in his neighborhood. Hence, he is prevented from establishing standing for some claimed injury which may or may not occur to other individuals living in the Cleveland Heights area. Therefore, the court concludes that the plaintiff lacks the requisite standing to bring this action.

The allegations of racial steering in Cleveland Heights was also the subject of a suit brought before the Honor-

able William K. Thomas. *Heights Community Congress v. Hilltop Realty, Inc.*, C79-422 (N.D. Ohio, December 31, 1980). In that action, Judge Thomas had to determine the standing of several individual plaintiffs. The court found that several individual plaintiffs lacked standing because they failed to demonstrate any actual injury. As with Smith, the individual plaintiffs which lacked standing in *Heights Community Congress v. Hilltop Realty, Inc., supra,* at 24-29, lived in an integrated neighborhood and were not personally deprived of the ability to interact with members of various racial backgrounds.

Accordingly, the motions for summary judgment filed by the defendants are hereby granted and this action is hereby dismissed.

IT IS SO ORDERED.

/s/ SAM H. BELL
U. S. District Judge

ORDER OF THE UNITED STATES DISTRICT COURT

(Filed December 27, 1983)

Civil Action
Number C80-1695

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

WILLIAM H. SMITH,
Plaintiff(s)

vs.

CITY OF CLEVELAND HEIGHTS, *et al.*,
Defendant(s)

ORDER

The court having filed its order granting the motions of the defendants for summary judgment, therefore, pursuant to Fed. R. Civ. P. 58.

IT IS ORDERED that summary judgment is granted in favor of defendants and against plaintiff and this action is hereby dismissed, with prejudice, at plaintiff's costs.

/s/ SAM H. BELL
United States District Judge

JUDGMENT ENTRY OF THE COURT OF APPEALS FOR THE SIXTH CIRCUIT

(Filed May 3, 1985)

No. 84-3099

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WILLIAM H. SMITH,
Plaintiff-Appellant,

v.

CITY OF CLEVELAND HEIGHTS, *et al.*,
Defendants-Appellees.

Before: MERRITT and WELLFORD, *Circuit Judges;* and HILLMAN, *District Judge.*

JUDGMENT

ON APPEAL from the United States District Court for the Northern District of Ohio.

THIS CAUSE came on to be heard on the record from the said District Court and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this court that the judgment of the said District Court in this case be and the same is hereby reversed and the case is remanded for further proceedings on the merits.

It is further ordered that Plaintiff-Appellant recover from Defendants-Appellees the costs on appeal, as itemized below, and that execution therefor issue out of said District Court, if necessary.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN
Clerk

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

(Filed July 12, 1985)

No. 84-3099

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WILLIAM H. SMITH,
Plaintiff-Appellant,

v.

CITY OF CLEVELAND HEIGHTS, OHIO, *et al.*,
Defendants-Appellees.

ORDER

BEFORE: MERRITT and WELLFORD, *Circuit Judges,* and HILLMAN* *United States District Judge*

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN
Clerk

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*Hon. Douglas W. Hillman sitting by designation from the Western District of Michigan

CONSTITUTION OF THE UNITED STATES

Article III, Section 2

ARTICLE III

SECTION 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — between a State and Citizens of another State; — between Citizens of different States; — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Amendment XIII, Section 1

AMENDMENT XIII

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Amendment XIV, Section 1

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law

which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C.S. § 3604

§ 3604. Discrimination in the sale or rental of housing

As made applicable by section 803 [42 USCS § 3603] and except as exempted by sections 803(b) and 807 [42 USCS §§ 3603(b), 3607], it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of race, color, religion, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, or national origin.

42 U.S.C.S. § 3617

§ 3617. Interference, coercion, or intimidation—Enforcement by civil action

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 803, 804, 805, or 806 [42 USCS §§ 3603, 3604, 3605, or 3606]. This section may be enforced by appropriate civil action.

42 U.S.C.S. § 1981

§ 1981. Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C.S. § 1983

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Terri-

tory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

CITY OF CLEVELAND HEIGHTS RESOLUTION NO. 26-1976

RESOLUTION NO. 26-1976 (MS) (As Amended)

By Councilman Blakely

A resolution committing the City Council to a renewed and expanded comprehensive program to promote the City of Cleveland Heights as a well-maintained, full-service residential community, to prevent racial resegregation, and to foster an increased joint effort with Cleveland Heights residents, community organizations, the Board of Education, the business community, and other institutions in the development and implementation of the described program; and declaring an emergency.

WHEREAS, HUD has declared April "Open Housing Month" throughout the communities of this Nation, and this City—since the year 1965—has continually and consistently approved and encouraged the concept of fair housing throughout the City of Cleveland Heights and the entire Metropolitan Cleveland area; and

WHEREAS, this Council believes it is absolutely necessary to the well-being of this community to provide for greater cooperation and effort between the City and the various elements of the housing delivery system; and

WHEREAS, this City, in order to promote the health, safety and welfare of the residents of this community—

beginning in the early 1960's and continuing to the present time—developed a program of maintenance standards for all commercial buildings and dwelling units within the City, and wishes to extend and improve this program, including emphasis on single-family units; and

WHEREAS, the continued and improved support and cooperation of financial institutions must be assured, and the loan policies and practices of the existing governmental institutions of FHA and VA must be reviewed, if the aims of this program are to be fully realized; and

WHEREAS, this Council is most appreciative of the valuable services performed by enthusiastic private citizens working in the Housing Service, neighborhood groups and other community organizations and institutions, spending countless hours to improve the quality of life in this community—and the City is committed to a continued and more effective partnership with these individuals and groups, providing for participation of all interested persons in accomplishing the aims of this program; and

WHEREAS, it is necessary to effectively communicate the contents of this program and the desirability of residency in this City to the public generally by the continuance and improvement of the City's current positive communications program; and

WHEREAS, this Council is cognizant of the fact that there are negative forces which operate in this and similarly situated communities, which make it more difficult to accomplish the worthy goals outlined in this program;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. This Council announces its intention, at the earliest date possible, to implement a comprehensive

program to accomplish the goals and purposes hereinabove stated, and to provide such funds as are necessary and proper to fulfill the elements of such a program. This comprehensive program shall include, but not be limited to, the following components:

(a) *Preferred Realty Office*

It is the policy of the City of Cleveland Heights to establish cooperative programs with the real estate industry that encourage the industry to implement affirmative marketing programs that expand the opportunities for white homeseekers to view homes in integrated neighborhoods and expand the opportunities for minority homeseekers to view homes in non-integrated neighborhoods. This program shall be known as the Preferred Realty Office.

In order to extend the number of agents working in this relationship with the city, and to increase our contact with brokers and managers, the Preferred Realty Office program will certify real estate offices that desire to participate and demonstrate success in affirmative marketing activities. Through a variety of promotional activities, these companies will be recommended to prospective homeseekers and to residents who wish to sell their homes.

(b) *Heights Housing Service*

The policy of the Heights Housing Service is to assist in maintaining the rich cultural and racial diversity that Cleveland Heights has now proudly achieved. Since efforts to achieve diversity are nullified by the potential resegregation of neighborhoods within the community, it is essential to

to continue to attract white homeseekers of all ages, but particularly young families with children who wish to explore the advantages of living in Cleveland Heights. It is equally essential that Cleveland Heights continue its commitment to area-wide open housing to assure that minority prospects be offered opportunities to explore a wide range of locational choices through the efforts of the City in cooperation with County-wide fair housing programs.

Services will be provided in keeping with this policy and with the clear understanding that all homeseekers are free to pursue housing of their choice.

(c) *Enactment of Legislation Prohibiting Mass Real Estate Solicitation, Steering and Blockbusting*

This legislation, including the establishment of a City Board to hear complaints thereunder, shall deal with the unfair and improper practices of a portion of the components of the housing delivery system. Necessary investigatory and monitoring programs shall be provided. With the creation of this Board, the legislation creating the Real Estate Advisory Committee will be repealed.

(d) *Expansion of the Current Community and Public Relations Program*

The increased emphasis on this important aspect of the total program shall permit greater diversity to the effort necessary to promote the benefits of living in this community and to communicate the nature of this program to existing home owners and prospective home owners of this community.

(e) *Establishment of a Financial Institution Advisory Committee*

This Committee, which shall include, among others, members of the financial community, shall review and examine policies and practices of financial institutions in the Greater Cleveland community as they affect the goals of this program, to recommend changes thereto, to recommend depository policies for City, school and other institutional funds, and to work with financial institutions to promote investment and reinvestment of funds in this community.

(f) *To Promote Fair Housing Throughout the Greater Cleveland Community*

One important function of this program shall be to provide close cooperation with the Cuyahoga Plan and other interested public and private organizations who seek true fair housing policies and practices for the entire Metropolitan Cleveland area.

(g) *Improved Code Enforcement Program*

It shall be an important aim of this portion of the program to improve the maintenance of public lands, commercial properties and private dwelling units within the community, including more detailed attention to single-family units within the City.

(h) *Cooperation With Community Organizations and Institutions and the Business Community*

A necessary aspect of this program will be the improved cooperation with individual citizens, community organizations and institutions, includ-

ing the School Board, to the end that such individuals, institutions and organizations sharing the goals of this program shall work jointly and effectively with the City as partners. Outside funding will be sought, where proper and feasible, to assist the cooperating parties in fulfilling portions of the overall program. Continued voluntary cooperation will be sought with businesses involved in the housing delivery system.

(i) *Evaluation Committee*

There shall be established an Evaluation Committee, or Committees, to ascertain the progress of the components of this program in achieving the stated goals. Membership on this Committee, or Committees, shall consist of representatives of the City, community organizations, housing-related delivery industries, and such other persons as may be necessary and proper to fully evaluate the stated program and make recommendations through the City Manager for its improvement.

SECTION 2. The City Manager is directed by this Council to proceed with all due haste to immediately put into effect and coordinate the components of this comprehensive program and to report to this Council at regular intervals the progress and his evaluation of the total program. The City Manager is further directed to have his staff prepare any and all legislation, or necessary documents and contracts, to implement the total program herein specifically approved.

SECTION 3. Notice of the passage of this Resolution shall be given by publishing the title and abstract of contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 4. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the City, such emergency being to permit implementation of this necessary and desirable program at the earliest time possible; wherefore, Council declares an emergency to exist, that this is an emergency measure which shall take effect and be in force immediately upon its passage.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FILED IN THE UNITED STATES DISTRICT COURT

(Filed September 12, 1980)

Civil Action No. C80-1695

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

WILLIAM H. SMITH, on behalf of himself and all others similarly situated

and

WILLIAM S. DOCKENS, on behalf of himself and all others similarly situated

Plaintiffs,

vs.

CITY OF CLEVELAND HEIGHTS, OHIO

and

RICHARD V. ROBINSON, as City Manager of the City of Cleveland Heights

and

HEIGHTS HOUSING SERVICE

and

BARBARA H. RODERICK, as Commissioner of Real Estate Programs

and

HEIGHTS COMMUNITY CONGRESS

and

LANA W. COWELL, as Executive Director of Heights Community Congress

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Class Action

INTRODUCTION

1. This is a class action brought by and on behalf of black residents of the City of Cleveland Heights against the City of Cleveland Heights, the Heights Community Congress and certain divisions and officers of each. Plaintiffs, on behalf of themselves and all others similarly situated, seek declaratory and injunctive relief restraining Defendants from enacting and implementing legislation, policies, programs and practices the purpose and effect of which is the promotion of racial steering and other racially discriminatory housing practices. Defendants' conduct violates the Fair Housing Act, 49 U.S.C. §3604 and §3617, the Civil Rights Act of 1866, 42 U.S.C. §§1981, 1982 and 1983, and the Thirteenth and Fourteenth Amendments to the Constitution of the United States.

JURISDICTION

2. Plaintiffs bring this suit for declaratory relief pursuant to 28 U.S.C. §2201 and for injunctive relief pursuant to 42 U.S.C. §§1981, 1982, 1983, 3601, *et seq.* and the Thirteenth and Fourteenth Amendments to the Constitution of the United States.

3. The Court has jurisdiction over this action pursuant to 42 U.S.C. §3612, 42 U.S.C. §3617, 28 U.S.C. §1343 and 28 U.S.C. §2201.

PARTIES

4. Plaintiffs are black citizens of the United States and residents of the City of Cleveland Heights. Both

named Plaintiffs are active in community affairs and have selected Cleveland Heights for residency because they value the social and professional benefits of living in an integrated community. They have openly and actively advocated, encouraged and petitioned Defendants to terminate their discriminatory housing programs. Plaintiffs bring this action on behalf of themselves and all citizens similarly situated.

5. Defendant, City of Cleveland Heights (hereinafter "City"), is a municipal corporation organized and existing under the laws of the State of Ohio. It is a community of 8.2 square miles contiguous to and east of Cleveland, Ohio and has a population of approximately 60,000 persons. The City has enacted comprehensive housing legislation regulating the marketing of real estate within the community with a particular emphasis on encouraging whites to move into the City while diverting blacks to other communities.

6. Defendant Richard V. Robinson is the City Manager of Cleveland Heights and is charged with the responsibility of supervising and overseeing the implementation of the City's racially discriminating housing laws and policies.

7. Defendant Barbara H. Roderick is the Commissioner of Real Estate Programs of Cleveland Heights and is directly in charge of the Heights Housing Service and the implementation of the City's racially discriminatory housing laws and policies.

8. Defendant Heights Housing Service is a division or department of the city government of Cleveland Heights which was created and exists primarily for the purpose of attracting whites to the City of Cleveland Heights while diverting blacks to other communities within the county.

The Heights Housing Service is the principal arm of the local government of the City with responsibility for implementing the City's housing legislation.

9. Defendant Heights Community Congress is a not-for-profit corporation organized under the laws of the State of Ohio and chartered on January 4, 1973. The Heights Community Congress is a volunteer organization financed at least in part by the City of Cleveland Heights. Its stated purpose is to promote and maintain Cleveland Heights as an integrated community, but it in fact directs blacks to communities outside of Cleveland Heights and actively solicits whites to purchase homes in Cleveland Heights.

10. Defendant Lana Cowell is the Executive Director of the Heights Community Congress and its chief administrative officer.

CLASS ACTION ALLEGATIONS

11. This is a class action brought pursuant to Rule 23(b)(2), Federal Rules of Civil Procedure, by and on behalf of all black residents of Cleveland Heights, Ohio. Plaintiffs and members of the Plaintiffs class have been deprived by the Defendants, their officers, employees or representatives, of fair housing opportunities and the social and professional benefits of living in an integrated community, as guaranteed by the Fair Housing Act, 49 U.S.C. §§3604 and 3617, the Civil Rights Act of 1866, 42 U.S.C. §1982, and the Thirteenth Amendment to the Constitution of the United States. The Defendants have racially discriminated against the Plaintiff class by enacting and implementing extensive housing legislation, policies, programs and practices designed to steer black homeseekers to neighborhoods outside of Cleveland Heights and to steer white homeseekers into neighborhoods within Cleveland Heights.

The Plaintiff class is so numerous that joinder of all members is impracticable, the class numbering in the approximate range of 15,000 to 20,000 persons. Moreover, there are questions of law and fact common to all members of the class, which questions concern the racial steering consequences inherent in the Defendants' housing policies and practices. The claims of the representative parties are typical of the claims of the Plaintiff class and the named parties will fairly and adequately represent and protect the interests of the class.

This action should be maintained as a class action because the Defendants have acted or refused to act on grounds generally applicable to the entire class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole. Common questions of law predominate over questions affecting only individual members and the class action is superior to other available methods for the fair and efficient adjudication of the controversy.

FIRST CAUSE OF ACTION

12. Plaintiffs incorporate by reference, as if fully rewritten herein, each and every allegation in paragraphs 1 through 11 hereof.

13. In 1970 approximately 2 1/2% of the 60,000 people residing in Cleveland Heights were black. This percentage has increased to 23% today.

14. In an effort to slow or stop the movement of blacks into Cleveland Heights, defendants have undertaken a comprehensive real estate program the purpose of which is to encourage whites to move into Cleveland Heights and to divert blacks to other communities.

15. In furtherance of its racially discriminatory program, defendants have engaged in the following activities:

a. Defendants have actively solicited through advertisements and special benefit programs whites to move into Cleveland Heights while discouraging blacks from the same.

b. Defendants have participated directly in the marketing of real estate by aiding whites in their efforts to find housing in Cleveland Heights while denying services to blacks and by aiding sellers in their attempts to sell to whites while denying services to sellers attempting to sell to blacks.

c. Defendants have established a Preferred Agents Program, also known as a Preferred Realty Office Program, the purpose of which is to enlist the support and efforts of licensed real estate brokers, salesmen and others in Defendants' attempts to steer blacks to communities outside of Cleveland Heights.

16. In engaging in the activities alleged in paragraphs 14 and 15(a) through (c) hereof, Defendants have acted with a racially discriminatory motive and their actions have had a racially discriminatory effect.

17. Defendants' policies and programs have deprived blacks of equal housing opportunities in Cleveland Heights and have denied Plaintiffs and the members of the Plaintiff class the right to interact with and associate on a social and professional basis with blacks who would otherwise take up residence in Cleveland Heights.

18. Plaintiffs have no adequate remedy at law to overcome the racially discriminatory practices of Defendants.

SECOND CAUSE OF ACTION

19. Plaintiffs incorporate herein each and every allegation appearing in paragraphs 1 through 18 as if fully rewritten herein.

20. Beginning in 1976 and continuing to the present, Defendants have engaged in a pervasive scheme to monitor, regulate and control the marketing of housing in Cleveland Heights with the purpose of steering blacks away from Cleveland Heights while actively soliciting whites.

21. The City has enacted the following legislation in furtherance of its racially discriminatory motives:

a. In March of 1976, Defendants enacted Resolution No. 26-1976, a copy of which is attached hereto and incorporated herein as Exhibit A. The Resolution created, among other things, a Preferred Agents Program designed to solicit and encourage real estate brokers and salespersons to participate in and support the provision of discriminatory housing services by defendants. It also established the Heights Housing Service as a special arm of city government with the purpose of supervising Defendants' efforts to steer blacks away from Cleveland Heights while actively soliciting whites.

b. In April of 1976, Defendants, for the purpose of advancing their racially discriminatory motive, enacted Resolution No. 27-1976 which prohibited real estate brokers, salesmen and all other persons from soliciting for sale listings of homes in Cleveland Heights. A copy of the Resolution is attached hereto and incorporated herein as Exhibit B.

c. In September of 1977, Defendants enacted Ordinance No. 49-1977 prohibiting the use of "for sale" and "for rent" signs in Cleveland Heights, the purpose of which is to hinder, restrict and deprive blacks of the opportunity to discover what houses in Cleveland Heights are on the market and available for purchase or rent. A copy of the Ordinance is attached hereto and incorporated herein as Exhibit C.

d. In October of 1977, Defendants enacted Ordinance No. 69-1977 requiring the owner of any home in Cleveland Heights to obtain a "point of sale" inspection certificate from the City before selling the home to any prospective purchaser. A copy of the Ordinance is attached hereto and incorporated herein as Exhibit D.

e. In November of 1979, Defendants amended Resolution No. 26-1976 to establish new and more stringent requirements for preferred real estate agents and salesmen in Cleveland Heights and to state specifically that the goal of the Heights Housing Service is to attract young white families to Cleveland Heights while diverting minorities to other communities. A copy of this Resolution is attached hereto and incorporated herein as Exhibit E.

f. In May of 1980, Defendants began advertising their Preferred Realty Office Program and soliciting the participation of real estate agents and salespersons, the objective being to coerce real estate agents and salespersons into aiding Defendants in steering blacks away from Cleveland Heights. A copy of the Application for the Preferred Realty Office Program is attached hereto and incorporated herein as Exhibit F.

22. The effect of the foregoing legislation has been to restrain, deter and restrict the marketing of real estate in Cleveland Heights, making it virtually impossible for a black to purchase a home in Cleveland Heights without the discriminatory involvement and interference of Defendants.

23. The assistance and involvement of the Defendants is available only to those sellers and purchasers of real estate, and real estate brokers and salesmen, who agree to comply with the racially discriminatory policies and practices of the Defendants.

24. The effect of the foregoing legislation and activities of the Defendants has been to divert blacks from the community of Cleveland Heights, thereby denying Plaintiffs and the members of the Plaintiff class equal housing opportunities in Cleveland Heights and the right to interact with and associate on a social and professional basis with blacks who would otherwise take up residence in Cleveland Heights.

25. Plaintiffs have no adequate remedy at law to overcome the racially discriminatory effect of the City's legislation and the implementation of this legislation by the other defendants.

WHEREFORE, Plaintiffs pray for the following relief:

(A) That the Court certify this action as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

(B) That the Court declare the City's housing legislation to be in violation of the Federal Housing Laws, namely the Fair Housing Act, 49 U.S.C. §3604 and §3617, the Civil Rights Act of 1866, 42 U.S.C. §§1981, 1982 and 1983 and the Thirteenth and Four-

teenth Amendments to the Constitution of the United States.

(C) That the court declare that Defendants' activities, as alleged herein, constitute racial steering in violation of the Fair Housing Act, 49 U.S.C. §3604 and §3617, the Civil Rights Act of 1866, 49 U.S.C. §§1981, 1982 and 1983 and the Thirteenth and Fourteenth Amendments to the Constitution of the United States.

(D) That the Defendants, and any of their agents, officers and employees, and all other persons in active concert or participation with any of them, be enjoined from discriminating against any person or group of persons on account of race or color in the sale, purchase or marketing of housing in Cleveland Heights.

(E) That the Defendants, and any of their agents officers and employees, and all other persons in active concert or participation with any of them, be enjoined from engaging in any conduct which has the purpose or effect of perpetuating or promoting racial residential segregation and racial steering.

(F) That the Defendants, and any of their agents, officers, employees, and all other persons in active concert or participation with any of them, be enjoined from engaging in any act or practice which has the purpose or effect of denying equal housing opportunities as provided in 49 U.S.C. §3604, the Civil Rights Act of 1866, 42 U.S.C. §1981, §1982 and §1983, and the Thirteenth and Fourteenth Amendments to the Constitution of the United States.

(G) That Defendants pay to Plaintiffs the cost and reasonable attorneys fees incurred in this action.

(H) That the court grant such other and further relief as the interests of justice may require.

Respectfully submitted:

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No. 85-653

In the Supreme Court of the United States

October Term, 1985

CITY OF CLEVELAND HEIGHTS, *et al.*,
Petitioners,

vs.

WILLIAM H. SMITH,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT WILLIAM H. SMITH IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF AUTHORITIES II

I. STATEMENT OF THE CASE 1

II. SUMMARY OF ARGUMENT 10

III. ARGUMENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI 11

A. Petitioners Fail to Demonstrate Special and Important Reasons Why a Writ of Certiorari Should Issue 12

B. Standing Requirements Under Article III 13

C. Respondent Has Alleged "Personal Injury" Sufficient to Satisfy the Standing Requirements of Article III 14

D. The Decision of the Court of Appeals Does Not Conflict With *Heckler v. Mathews,* Nor *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.* 19

E. Respondent's Personal Injury Is Directly Traceable to Petitioners' Unlawful Conduct 22

F. Respondent's Personal Injury Is Likely to Be Redressed by the Requested Relief 24

IV. CONCLUSION 25

TABLE OF AUTHORITIES

Cases

Allen v. Wright, 104 S. Ct. 3315 (1984) ..... *passim*
Gladstone Realtors v. Village of Bellwood, 441 U.S. 91 (1979) 10, 13, 17, 18, 25
Havens Realty Corp. v. Coleman, 455 U.S. 363 (1982) 10, 13, 19
Heckler v. Mathews, 465 U.S. 728 (1984) 10, 11, 13, 19, 20, 21, 25
Smith v. City of Cleveland Heights, 760 F.2d 720 (6th Cir. 1985) 14, 21
Trafficante v. Metropolitan Life Insurance Co., 409 U.S. 205 (1972) 10, 13, 16-17, 18, 25
Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464 (1982) 10, 11, 19, 20, 21-22, 25
Warth v. Seldin, 422 U.S. 490 (1975) 13

Constitutional Provisions and Statutes

U.S. Const., Art. III, §2, ¶1 ..... 13, 14
U.S. Const., Amend. XIII, §1 2
U.S. Const., Amend. XIV, §1 2
42 U.S.C. §1981, Civil Rights Act of 1866 2
42 U.S.C. §1982, Civil Rights Act of 1866 2
42 U.S.C. §1983, Civil Rights Act of 1866 2
42 U.S.C. §3604, Fair Housing Act, Title VIII, Civil Rights Act of 1968 2

Rule

Supreme Court Rule 17 12

Ordinances and Resolutions

Resolution No. 26-1976, City of Cleveland Heights, adopted March 15, 1976, as amended November 15, 1979 3

Ordinance No. 27-1976, adopted April 5, 1976, as amended by Ordinance No. 16-1983, adopted February 23, 1983 3

Ordinance No. 49-1977, adopted September 19, 1977 3

Ordinance No. 69-1977, adopted October 17, 1977 3

No. 85-653

In the Supreme Court of the United States

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CITY OF CLEVELAND HEIGHTS, *et al.*,
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vs.

WILLIAM H. SMITH,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
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FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT WILLIAM H. SMITH IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I. STATEMENT OF THE CASE

Respondent, William H. Smith ("Respondent" or "Mr. Smith"), a black resident of the City of Cleveland Heights, instituted this action on September 12, 1980, on behalf of himself and all black residents of Cleveland Heights, against the City of Cleveland Heights ("CH" or the "City"), the Heights Community Congress ("HCC") and

certain divisions and officers of each, alleging that they have engaged in conduct with the purpose, intent and effect of violating Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3604 (hereinafter the "Fair Housing Act"), the Civil Rights Act of 1866, 42 U.S.C. §§1981, 1982, and 1983 and the Thirteenth and Fourteenth Amendments to the United States Constitution. Respondent claims that Petitioners have enacted and administered housing legislation, programs and policies with a racially discriminatory *motive* and that their actions have had the racially discriminatory *effect* of preventing the movement of blacks into CH, while openly and admittedly soliciting the movement of whites into CH.

Petitioners filed motions to dismiss, or alternatively for summary judgment, in April, 1983, challenging Respondent's standing to bring this action, which were granted by the district court on December 22, 1983. The court found that Respondent had failed to demonstrate that he had personally suffered some actual or threatened injury as a result of the putatively illegal conduct of the Petitioners. The United States Court of Appeals for the Sixth Circuit reversed the district court's decision on May 3, 1985. The court of appeals found that:

> the source of his injury is a local government policy tailored expressly to shape the racial composition of his community. The situs is the very community in which he lives. These direct and concrete connections demonstrate that Smith's injury is peculiar to himself or to a distinct group of which he is a part, *Gladstone Realtors v. Village of Bellwood,* 441 U.S. 91, 100 (1979), and that he is personally subject to the challenged discrimination. *Allen* [*v. Wright*], 104 S. Ct. at 3327.

The factual background out of which this litigation arises was begun when the Cleveland Heights City Council passed Resolution No. 26-1976 on March 15, 1976, creating a comprehensive housing program designed to regulate and maintain the racial composition of the City.[1] The intent of this statutorily created housing program is to encourage whites to find housing within CH and blacks to find housing outside of CH. Resolution No. 26-1976, as amended, specifically provides as follows:

> [*I*]*t is essential to continue to attract white homeseekers of all ages, but particularly young families with children who wish to explore the advantages of living in Cleveland Heights.* It is equally essential that Cleveland Heights continue its commitment to area-wide open housing to *assure that minority prospects be offered opportunities to explore a wide range of locational choices through the efforts of the City in cooperation with County-wide fair housing programs.*

Petitioners' comprehensive housing scheme is administered through several programs and policies implemented

---

1. Resolution No. 26-1976 was amended on November 19, 1979. Likewise, Respondent's complaint challenges other ordinances which CH has enacted and which have become part of this comprehensive housing program. Although Petitioners state in a footnote for the first time that Mr. Smith's appeal before the Sixth Circuit Court of Appeals was directed solely to his standing to challenge Resolution No. 26-1976, as amended, Respondent has challenged the entirety of Petitioners' conduct in controlling the housing market in Cleveland Heights. The issue of whether the other ordinances challenged by Respondent, including Ordinance No. 27-1976 and amendments thereto by Nos. 16-1983, 49-1977 and 69-1977 are discriminatory is properly a question left for the prosecution of the merits of the case. Neither the district court nor the court of appeals decisions have limited the question of Mr. Smith's standing to Ordinance No. 26-1976, as amended.

by CH's Community and Public Relations Department under the direction of Commissioner Lawrence J. Mattes. The following housing programs are administered through these divisions: Heights Housing Service ("HHS"), Preferred Realty Office ("PRO"), Public Advertising of Housing Opportunities in CH, and Promotion and Advertising of PRO brokers (Mattes Depo. at 3-10, 31-33, 43-45, 63-65).

HHS is a service provided to potential home seekers and home buyers in CH, providing escorted tours, referrals to approved real estate brokers and agents and advertising services for PRO brokers and agents (Mattes Depo. at 9 and 16; Deposition of City Manager Robinson at 45). All blacks (but only blacks) who come to HHS for information or service are referred to the Cuyahoga Plan[2] (Mattes Depo. at 16). No whites are referred to the Cuyahoga Plan (Mattes Depo. at 43-44).

The PRO program exists pursuant to a contractual arrangement between CH and selected real estate brokers and agents who have agreed to comply with and promote the City's "affirmative marketing programs."[3] CH provides PRO brokers with educational programs about the city and promotes PRO brokers in real estate advertise-

---

2. The Cuyahoga Plan is a county-wide housing service provided to home seekers within Cuyahoga County, Ohio. The Cuyahoga Plan escorts the black home seekers referred to it by Cleveland Heights into areas throughout the metropolitan Cleveland area thereby decreasing the likelihood that the black home seeker will eventually purchase a home in CH.

3. For purposes of clarity, Respondent will use CH's terminology in referring to the challenged housing legislation, programs and policies as an "affirmative marketing plan" even though Mr. Smith denies that they constitute such a plan. The challenged legislation, programs and policies were not enacted to address identified past discrimination against blacks within CH.

ments, "Heights Happenings" newsletters, "Info-Paks" about CH and other outlets (Mattes Depo. at 69-73). In exchange, PRO brokers and agents agree to assure that white buyers will be given the opportunity to view properties in CH and that black buyers will have an opportunity to see homes throughout the metropolitan area (Mattes Depo. at 43).

Moreover, to become a PRO broker or agent, and in order to maintain PRO status, each real estate broker and its agents must demonstrate on a yearly basis that it is complying with CH's "affirmative marketing" program. Each PRO broker or applicant must submit documentary evidence that its office has caused real estate to be sold to *white buyers in CH* and/or to *black buyers outside of CH* in a quantity equal to the number of licensed agents in the broker's office or twenty-five, whichever is less (Mattes Depo. at 70-73). Recognizing the advantages of being a PRO broker, City Manager Robinson readily admitted that "there is a likelihood that the PRO broker would sell a house [in Cleveland Heights] to the white buyer as opposed to the black buyer, all things equal." (Robinson Depo. at 51).

CH's public advertising of housing opportunities within the City promotes CH throughout the Greater Cleveland area and within the State of Ohio as a "great" place to live (Mattes Depo. at 12). However, these advertising and promotional programs are targeted only to attract whites to CH (Mattes Depo. at 21). In fact, Commissioner Mattes admits that it is a policy of CH to attract potential white home seekers, especially young white families (Mattes Depo. at 21). Further, City Manager Robinson admits that CH's marketing strategy mirrors the purpose of Resolution 26-1976, as amended (Robinson Depo. at 21).

Evidence from the Petitioners also establishes that the intent and effect of CH's comprehensive housing programs is to maintain the City's white majority and black minority. To perpetuate this racial composition, Petitioners have felt compelled to enact and operate programs which discourage the movement of blacks into the community while at the same time actively encouraging the movement of whites into the community. City Manager Robinson, in conceding the success of the City's effort in manipulating the racial makeup of CH, attempted to justify the City's effort in the following testimony:

> A. Unfortunately, we have not seen, in the United States, a pattern of where different races live together in the same city in harmony. So that people have tended to believe, whether right or wrong, that housing values or property values decline if a community is racially integrated. And that was the concern to residents of the community and as I understand it at that time, while I was not directly involved in it, it was the concern of the City Council and to the operation of the city government. (Robinson Depo. at 35.)
>
> * * * * *
>
> Q. You would like to think the reason why that racial composition has been maintained is because of the comprehensive real estate program?
>
> A. Yes.
>
> * * * * *
>
> Q. Is that program [real estate program] established to affect the racial make-up of the city?
>
> A. If by "affect" you mean to maintain it as an integrated community, yes. If you mean to set goals or percentages of how many of what color will

live here, the answer is no. (Robinson Depo. at 43, 70.)

* * * * *

Q. Okay. Now in administering the comprehensive real estate program, does the city make an effort to determine or break down the city in terms of less integrated and more integrated neighborhoods?

A. No. Not to my knowledge, no. The city has always treated the integrative process as a city-wide process. I can't speak for past managers, but the time I've been here, it has been a community-wide process. Not a neighborhood process or a school district process, but that of a city-wide.

We have had community busing for the schools for years. I mean, with kids going to different schools, with only one high school. Everybody is feeding into the same system from the same schools, so we've treated it as a community process. (Robinson Depo. at 73.)

City Commissioner Mattes also testified that CH openly prefers white residents to black residents. In his deposition on February 24, 1983, Mr. Mattes testified as follows:

Q. Can you tell me if you attempt to attract minorities and specifically blacks to the housing service?

A. What do you mean by attract?

Q. Well, in terms of selling the City of Cleveland Heights as a favorable place to live, do you actively solicit black home seekers to come to Cleveland Heights and purchase homes in Cleveland Heights?

A. The answer to that would be no, that we do not specifically tailor or market communications to black minorities.

Q. Do you tailor your advertising and promotional program to whites?

A. Generally speaking, yes.

Q. So that it's a policy of the City of Cleveland Heights to attract whites as potential home seekers; is that right?

A. Yes, that is correct.

Q. And particularly, the city is attempting to attract young, white families? Is that correct?

A. Yes, that's correct.

Q. That's what the advertisement and promotional programs of the city are directed at?

A. Yes, that's true. (Mattes Depo. at 20-21.)

Within the context of CH's open preferences for whites and not blacks, Mr. Smith testified that he has been injured by the intent, effect and stigma of denying blacks the same opportunity to exercise their right to choose freely to live in CH, without government intervention and prevention, as is given to whites. In his deposition taken on October 30, 1980, Respondent described the stigmatic injury which affects his daily life.

Q. So, as far as you are concerned, you did not have any evidence to tell me that what you say are discriminatory programs are being effective; is that correct?

MR. BURTCH: Objection. Repetitive.

A. No. I am saying that the mere fact that you are suggesting that they [blacks] move somewhere else harms me as a black living here simply by

> suggesting that they [blacks] are not wanted here. Your program and the attempt has been successful. (Smith Depo. at 54.)

Mr. Smith further stated in his deposition taken on February 24, 1983, that he was "stigmatized" based on CH's open preferences for whites:

> Q. Have you, yourself, to the best of your knowledge, ever been denied a right to interact and associate on a social and professional basis with black persons, other black persons because of any action, policy, legislation whatsoever of the City of Cleveland Heights?
>
> A. No, but we—
>
> Q. What is your answer?
>
> A. No, but we interact with the stigmas that have been created by the City of Cleveland Heights.
>
> Q. Or at least your perception that such stigmas exist, is that right?
>
> A. Well, it's not a perception at all. (Smith Depo. at 79-80.)

Mr. Smith's testimony is that the stigma of this preference constitutes an actual *and* threatened injury to the quality of his daily life because the Petitioners have publicly stated that he and other members of his race are less-preferred than white residents of CH. Moreover, CH's attempt to maintain the racial composition of CH causes daily injury to Respondent because it denies and threatens to deny him the opportunity to enjoy social, professional and political association with members of his own race. Unquestionably, CH's manipulation of the City's racial composition prevents blacks from ever achieving a social or political majority within CH.

II. SUMMARY OF ARGUMENT

Petitioners argue that Mr. Smith does not have standing in this case because he has not been prevented from obtaining housing as a result of the challenged unlawful conduct based on one sentence, taken out of context, contained in *Allen v. Wright,* 104 S. Ct. 3315 (1984), and purportedly supported by *Heckler v. Mathews,* 465 U.S. 728 (1984), and *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.,* 454 U.S. 464 (1982), that "a plaintiff must have personally been denied equal treatment by the challenged discriminatory conduct." Petitioners ignore that the cases they cite do not involve challenges to discriminatory housing practices. Petitioners, likewise, do not discuss the leading cases articulating the standing requirements to challenge housing discrimination.

Mr. Smith has alleged two injuries which he has incurred as a result of Petitioners' preference for white rather than black homeowners in CH: (1) he has been stigmatized as a member of an inferior class of people, and (2) he has been denied and threatened with denial of important social and professional relationships with other blacks. Contrary to Petitioners' argument, to establish standing based on either of these injuries, it is not necessary for Mr. Smith to demonstrate that he has been denied housing opportunities in CH. The decisions of this Court in *Havens Realty Corp. v. Coleman,* 455 U.S. 363 (1982), *Gladstone Realtors v. Village of Bellwood,* 441 U.S. 91 (1979) and *Trafficante v. Metropolitan Life Insurance Company,* 409 U.S. 205 (1972) all held that the "personal injury" requirement of standing can be satisfied short of proof that the plaintiff has been denied housing opportunities; the

plaintiff need only establish a judicially cognizable injury that is directly traceable to the challenged conduct. This Court has long recognized that stigmatic injury resulting from racial discrimination, and the denial of association opportunities to those who are not direct targets of discrimination constitute judicially cognizable injuries. *Id.* Accordingly, Mr. Smith has alleged direct personal injury sufficient to satisfy the requirements of standing inasmuch as he has been personally denied equal treatment by the challenged discriminatory conduct.

III. ARGUMENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

Petitioners assert that the decision of the United States Court of Appeals for the Sixth Circuit in this case is at odds with the holdings of this Court in *Allen v. Wright*, 104 S. Ct. 3315 (1984), *Heckler v. Mathews*, 104 S. Ct. 1387 (1984), and *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464 (1982). Petitioners mistakenly read these cases, all of which pertain to challenges of national executive policy, as limiting standing in housing discrimination cases to those individuals who have themselves been prevented from obtaining housing as the result of the challenged practices. Petitioners particularly rely on language in these cases pertaining to the directness of the injury necessary to satisfy standing prerequisites, and argue that because Mr. Smith was not actually steered away from purchasing a house in Cleveland Heights, he has no standing to challenge the City's racially discriminatory housing practices. Mr. Smith contends that Petitioners' argument is without merit because it fails to take into account the two decisions of this Court that are most

analogous to the instant case, and also because it rests on a fundamental misapprehension of the nature of his injury.

A. Petitioners Fail to Demonstrate Special and Important Reasons Why a Writ of Certiorari Should Issue

Rule 17 of the Supreme Court Rules indicates that a Writ of Certiorari "will be granted *only when there are special and important reasons therefore.*" (Emphasis supplied). These reasons include resolution of a conflict between the federal courts of appeals, resolution of a conflict between the court of appeals and a state court of last resort, and correction of a decision which conflicts with applicable holdings of this Court. *Id.*

As is set forth more fully in the following sections, Petitioners have failed to demonstrate that issuance of a writ is appropriate here. Although Petitioners take exception to the Sixth Circuit's interpretation of the record in this case, this obviously is not a "special and important" reason that would warrant issuance of a writ by this Court.

Petitioners' attempts to manufacture a conflict between the decision of the court of appeals, and previous decisions of this Court, are likewise unavailing. None of the cited cases supports Petitioners' assertion that individuals lack standing to challenge discriminatory housing practices unless they are prevented from purchasing a home in a particular area as a result of the unlawful practices. This Court has long recognized within the context of housing discrimination that stigmatic injury is inflicted, not only on the individuals who are "blacklisted," but also on the residents of the specific commu-

nity in which blacklisting occurs. *See Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972), *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979). The Sixth Circuit was mindful of these decisions, and correctly determined that Mr. Smith has standing to bring this action.

The opinion of the Sixth Circuit clearly reveals that the court considered, and correctly applied, this Court's recent standing decisions in *Allen v. Wright*, 104 S. Ct. 3315 (1984), and *Heckler v. Mathews*, 465 U.S. 728 (1984). Thus, it is apparent that issuance of a Writ of Certiorari is unwarranted inasmuch as the "special and important reasons" required under the Rules of this Court are entirely lacking.

B. Standing Requirements Under Article III

In enacting the Fair Housing Act, 42 U.S.C. §§3601-3632, Congress intended that standing "extend to the full limits of Article III." *Havens Realty Corporation v. Coleman*, 455 U.S. 363, 372 (1982) (*citing Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979)). To satisfy the Constitutional minima, "[a] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen v. Wright*, 104 S. Ct. 3315, 3325 (1984). Such injury need only be "distinct and palpable" to satisfy the requirement of standing doctrine. *Warth v. Seldin*, 422 U.S. 490, 501 (1975).

The Court of Appeals for the Sixth Circuit considered the "core component" of constitutional standing enunciated in *Allen v. Wright*, and determined that Mr. Smith satisfied this requirement because (1) he has suffered a personal injury; (2) the injury is fairly traceable to the Peti-

tioners' challenged conduct; and (3) the injury is likely to be redressed by the judicial relief sought. *Smith v. City of Cleveland Heights*, 760 F.2d 720 (6th Cir. 1985). The court found that Mr. Smith alleged distinct and palpable injury resulting from Petitioners' racially discriminatory housing practices, which practices imposed a stigma of undesirabilty upon all blacks residing in CH. As the Sixth Circuit observed, Petitioners' policies say to Mr. Smith that although his presence may be tolerable, the City wants no more of his race to enter as homeowners. *Id.* at 722. The court correctly determined that such policies, perpetrated by Mr. Smith's local government, personally and directly injure him. Moreover, since this injury stems directly from the housing practices, publicly adopted by Petitioners, Mr. Smith's injury is "fairly traceable" to the alleged unlawful acts and is likely to be redressed if the requested injunctive relief is granted.

C. Respondent Has Alleged "Personal Injury" Sufficient to Satisfy the Standing Requirements of Article III

Petitioners primarily challenge the Sixth Circuit's conclusion that Mr. Smith has alleged "personal injury" sufficient to satisfy the Constitutional minima for standing. According to Petitioners, even if the City has enacted racially discriminatory housing policies, Mr. Smith, a member of the race against which CH has discriminated and a resident of the City, has suffered no personal injury because he purchased his home prior to the adoption of the challenged housing practices, and because he lives on an integrated street. However, their assertion is premised on a reading of *Allen v. Wright*, 104 S. Ct. 3315 (1984), that is at odds with this Court's leading standing decisions in the context of housing discrimination actions.

In *Allen*, suit was brought by the parents of black children who attended public school, against the Secretary of the Treasury and the Commissioner of the Internal Revenue Service, on the ground that the defendants had not been sufficiently vigilant in enforcing an IRS policy denying tax-exempt status to racially discriminatory private schools. The *Allen* Court found that the chain of causation between the challenged conduct and the injury to the plaintiffs was too attenuated to satisfy the requirements of standing. Justice O'Connor reasoned that recognition of the "abstract" stigmatic injury asserted by the plaintiffs would result in opening the federal courts to suits by parties with no direct relationship to the alleged action: "[a] black person in Hawaii could challenge the grant of a tax exemption to a racially discriminatory school in Maine." *Id.* at 3327. The Court held that the plaintiffs' asserted stigmatic injury could be sufficient for standing purposes only if their alleged injury "independently meets the causation requirements of standing doctrine." *Id.* at n.22.

Petitioners' efforts to bring this case into conflict with *Allen* are predicated on a failure to recognize that the *Allen* plaintiffs alleged two injuries to support standing: (1) that they were injured because the government provided financial aid to discriminatory private schools; and (2) that plaintiffs' children were being denied the opportunity to receive an education in a racially integrated school. The Court determined that the first alleged injury was not a personal injury because plaintiffs did not allege that the challenged conduct was either directed at them or affected the quality of their daily lives. In other words, plaintiffs did not assert a personal interest which was affected by the government's challenged conduct.

The Court determined that the second injury alleged, that plaintiffs' children were being denied the opportunity to receive an education in a racially integrated school, was a "concrete personal injury that can support standing." 104 S. Ct. at 3327. The Court then analyzed the causal relationship between the plaintiffs' asserted interest and the challenged conduct and determined that (1) plaintiffs' injury resulted from the independent acts of third parties not before the Court (private schools engaging in discrimination); (2) there was no evidence of how many racially discriminatory private schools were receiving tax exemptions; (3) there was no evidence that the denial of the tax exemption would lead to a change in school policies; and (4) there was no evidence that parents would transfer their children to public schools as a result of any changes in educational or financial policies. Based on this analysis of the causal connection between the personal injury alleged and the challenged conduct, the Court determined that plaintiffs' injury was too abstract and speculative to establish a denial of equal treatment.

Unlike *Allen*, the discrimination that is occurring in this case does not involve third parties, but is directly attributable to Petitioners. Moreover, Mr. Smith's interest in not being stigmatized as an inferior citizen or denied and threatened with denial of important social and professional relationships with other blacks and whites, freely chosen, is directly related to Petitioners' endeavors to maintain the City's current racial composition.

Not only does Petitioners' attempt to manufacture a conflict between *Allen* and this case fail because Petitioners have mischaracterized the reasoning of this Court in *Allen*, but, perhaps more obviously, it fails because it totally ignores this Court's pronouncements in *Trafficante v. Met-*

ropolitan Life Insurance Company, 409 U.S. 205 (1972) and *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1974), which directly address the standing issue raised in this case. Both *Trafficante* and *Gladstone* recognize stigmatic injury as a personal injury sufficient to confer standing, even though the plaintiffs' injuries in those cases were not the result of discrimination *directed* at them. Acceptance of Petitioners' interpretation of *Allen* would require the overruling of both *Trafficante* and *Gladstone*, even though the *Allen* Court cited *Trafficante* with favor.

In *Trafficante*, two residents of an apartment complex, one black and one white, filed suit alleging that the landlord was engaged in discriminatory housing practices. They alleged, as did Mr. Smith in this case, that they had been deprived of the business and professional advantages of living in an integrated community, and that they had been stigmatized by living in a community whose racial composition had been manipulated by the landlord to exclude blacks. 409 U.S. at 208. The Court reversed the decisions of the district court and the court of appeals, and held that the plaintiffs had standing to challenge these practices, *notwithstanding the fact that the plaintiffs had not themselves been steered or discriminated against with regard to housing.* Justice Douglas observed that the legislative history of the Fair Housing Act indicates a concern "that those who were not the direct objects of discrimination had an interest in insuring fair housing, as they too suffered." *Id.* at 210 (footnote omitted). Thus, Petitioners' reading of *Allen* is in direct conflict with the decision of this Court in *Trafficante*.

Similarly, the Court held in *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979), that individual residents of the Village of Bellwood had standing to bring an action against various real estate agents because of

alleged discriminatory housing practices, even though the plaintiffs *"admittedly had not been steered away from any homes they might have wished to purchase."* *Id.* at 97 (emphasis added). If the argument advanced by the Petitioners had prevailed in *Gladstone,* the plaintiffs would have been denied standing to challenge the discriminatory steering practices since they, like Mr. Smith in this case, were not steered away from purchasing any homes, and because they resided in an integrated neighborhood. Instead, the Court recognized that the residents of the neighborhood wherein the alleged racial steering had occurred had standing to challenge the discriminatory housing practices. *Id.* at 114-15.

The only difference between the decisions in *Trafficante* and *Gladstone* and this case is that here, the discriminatory housing practices were instituted by the local government rather than by private individuals—real estate agents or private landlords. However, this distinction highlights, rather than undermines, the gravity of Respondent's injury, the personal nature of the injury, and the traceability of the injury directly to the Petitioners' conduct. In addition to being forced to live in a community whose racial composition is overtly manipulated by the Petitioners, Mr. Smith must endure the City's express denigration of his race through a policy that solicits whites and discourages blacks from entering CH as homeowners. Obviously, the black plaintiff in *Trafficante,* like Mr. Smith, was not excluded from the apartment complex; yet he was directly and deeply affected by the landlord's decision not to allow *too many blacks* to live within the complex. *See* 409 U.S. at 208. The plaintiff in *Trafficante,* like Mr. Smith, suffered stigmatic injury and was denied the benefits of social and professional relations with other blacks.

Finally, in *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), this Court recognized that the denial of "important social, professional, business and economic, political and aesthetic benefits of interracial associations that arise from *living in* integrated communities *free from discriminatory housing practices*," constitutes personal injury where there is proximity between the area in which plaintiff lives and the alleged steering practices. *Id.* at 376-377. In this case, there is no dispute that Mr. Smith lives in CH and that the alleged discriminatory conduct is city-wide.

D. The Decision of the Court of Appeals Does Not Conflict With Heckler v. Mathews, Nor Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.

Petitioners also rely on *Heckler v. Mathews*, 465 U.S. 728 (1984), and *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464 (1982), as support for their argument that Smith lacks standing to challenge the discriminatory housing practices of Petitioners. Essentially, Petitioners attempt to make the same argument with regard to *Heckler* and *Valley Forge Christian College*, as they have made with regard to *Allen v. Wright*: because each of these cases contains language requiring Plaintiffs to demonstrate that they personally have suffered some actual or threatened injury, Mr. Smith, who was not himself steered away from Cleveland Heights, does not have standing to bring this action. However, Petitioners misread *Heckler* and *Valley Forge Christian College* in much the same manner that they misconstrue *Allen*.

Contrary to Petitioners' argument, in *Heckler v. Mathews,* 465 U.S. 728 (1984), the Court held that the plaintiff *had standing* to challenge a discriminatory policy promulgated by the Department of Health and Human Services even though he would derive no personal benefit if the challenged clause were stricken. The Court stated:

> Rather, as we have repeatedly emphasized, discrimination itself, by perpetuating "archaic and stereotypic notions" or by stigmatizing members of the disfavored group as "innately inferior" and therefore as less worthy participants in the political community, *can cause serious non-economic injuries to these persons who are personally denied equal treatment solely because of their membership in a disfavored group.* 465 U.S. at 1395 (citations deleted) (emphasis added).

The *Heckler* decision supports the Sixth Circuit's decision, rather than undermines it, because it holds that the stigmatization of members of disfavored groups as innately inferior causes serious non-economic injuries to those persons denied equal treatment because of their membership in a disfavored group. In the case at bar, the Sixth Circuit determined that Mr. Smith, as a member of the class disfavored by Petitioners, has standing because he is personally denied equal treatment as a member of a class of persons that is disfavored, and therefore treated unequally, by the City in which he lives.

Similarly, *Valley Forge Christian College v. Americans United for Separation of Church and State,* 454 U.S. 464 (1982), is consistent with the decision of the Sixth Circuit in this case. In *Valley Forge Christian College,* the plaintiff, a taxpayers' organization, alleged that the transfer of

surplus property by the Secretary of Health, Education and Welfare to a non-profit educational institution operating under the supervision of a religious order deprived its members of "the fair and constitutional use of [their] tax dollar" in violation of their rights under the First Amendment. *Id.* at 476. The majority of the Court held that the plaintiff was without standing as taxpayers because the source of its Complaint was not a congressional act and it was not an exercise of the taxing and spending clause. The Court further held that plaintiff's general challenge to government action, as violative of the law, did not allege personal injury because the plaintiff did not identify any personal injury suffered as a consequence of the challenged conduct "other than the psychological consequence presumably produced by observation of conduct with which one disagrees." *Id.* at 485.

In the instant case, Mr. Smith has alleged far more than psychological discomfort attendant to the observation of conduct with which he disagrees. As the Sixth Circuit aptly observed, Mr. Smith is burdened with "a badge or label of inferiority" imposed on him purely on the basis of his race. *Smith v. City of Cleveland Heights,* 760 F.2d 722. His interest is a very personal one that far exceeds the interest of a concerned bystander: "[h]e lives out daily routines and neighborhood interactions as a member of a race which his own City labels as undesirable for purposes of housing policy." *Id.* Thus, unlike the plaintiff in *Valley Forge Christian College* who failed to allege "an injury of any kind," 454 U.S. at 486, Smith has properly alleged the sort of non-economic stigmatic injury long recognized by this Court as being judicially cognizable. *Heckler v. Mathews,* 465 U.S. 728 (1984).

Thus, neither *Heckler v. Mathews,* nor *Valley Forge Christian College v. Americans United for Separation of*

Church and State, Inc., supports Petitioners' assertion that the Sixth Circuit erred in determining that Mr. Smith has standing to bring this action.

E. Respondent's Personal Injury Is Directly Traceable to Petitioners' Unlawful Conduct

Petitioners halfheartedly assert that even if Mr. Smith has suffered stigmatic injury owing to Petitioners' racially discriminatory housing practices, such injury is not "fairly traceable" to the Petitioners' actions, and hence the injunctive relief sought would not redress that injury. The only basis for Petitioners' assertions is that "the record in this case contains no evidence that would support either conclusion." Brief of Petitioners at 19.

Even assuming for purposes of argument that Petitioners' disagreement with the Sixth Circuit's interpretation of the record is a proper ground for issuance of a Writ of Certiorari by this Court, Petitioners' argument is preposterous. Respondent's injury is neither abstract nor speculative: the source of his injury is specific government policies and programs implemented by Petitioners to manipulate the racial composition of CH. The causal connection between Respondent's injuries and the alleged unlawful conduct is direct and concrete.

That CH's comprehensive housing programs and policies deny equal treatment solely on the basis of race is obvious. City Manager Robinson and City Commissioner Mattes admitted in disposition that whites are preferred and openly solicited by Petitioners whereas blacks are encouraged to find housing outside of CH. Petitioners also admitted that their purpose is to maintain the current racial composition of CH by contracting to require

real estate brokers and agents to sell housing to whites in CH, and to sell to blacks outside of CH. CH also admits that it directs its advertising to attract whites, especially young white families, but not blacks.

There can be no doubt that Respondent is stigmatized as an inferior citizen and is threatened and denied social, professional and political benefits of associating with other blacks who would otherwise choose to live in CH. Petitioners' conduct and their admitted intent to attract whites but not blacks to CH, informs Mr. Smith that there are now enough blacks in CH and that a higher percentage of blacks is undesirable.

The Court should note that Petitioners do not even attempt to deny that their housing programs and policies are discriminatory. Instead, Petitioners ask the Court to focus on Respondent without any consideration of the challenged unlawful conduct.[4] As the Court in *Allen* recognized, the injury alleged must be considered in light of the challenged conduct. In this case, it is simply ludicrous to assert that black residents of CH, including the Respondent, whose government prefers to attract white residents based solely on race, are not harmed by this express policy declaring blacks as less-preferred residents.

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4. Contrary to Petitioners' argument that the Court should not consider the admissions and other evidence which demonstrate that CH's housing programs are race-conscious, this Court's decision in *Allen* requires consideration of the challenged conduct. Respondent's testimony must be considered in conjunction with the evidence of discriminatory conduct for three reasons: (1) the evidence establishes Respondent's denial of equal treatment as compared to the white residents of CH; (2) the evidence establishes the causal connection between the Respondent's injury and the challenged conduct; and (3) the evidence establishes that the relief requested will erase the source of Respondent's injury.

Finally, in contrast to *Allen*, the discriminatory conduct challenged in this case does not involve third parties whose independent conduct may not be affected by the relief requested. Instead, the challenged conduct is directly attributable to the Petitioners. As admitted by City Manager Robinson, the situs of the challenged conduct is the very community in which Respondent lives, and is not limited to a specific neighborhood in CH.

F. Respondent's Personal Injury Is Likely to Be Redressed by the Requested Relief

Respondent seeks declaratory and injunctive relief to prohibit Petitioners from implementing housing programs and policies on a race-conscious basis. The declaratory and injunctive relief sought by Respondent will invalidate the facially infirm ordinances of the City which openly declare blacks to be less preferable residents of the community, will put an end to all of Petitioners' practices and policies designed to manipulate the racial makeup of CH and will close the Heights Housing Service, at least to the extent it presently exists in violation of federal law. As such, the requested relief will not only erase the source of Respondent's stigmatic injury but will also allow the City's racial composition to develop as freely chosen by its citizens without discriminatory governmental interference.

IV. CONCLUSION

Respondent requests this Honorable Court to deny the Petition for a Writ of Certiorari because Petitioners have not identified any special and important reasons why a Writ should issue. The court of appeals correctly applied this Court's standing decisions, including *Allen v. Wright, Heckler v. Mathews* and *Valley Forge Christian College v. Americans for Separation of Church and State, Inc.*, as well as *Trafficante v. Metropolitan Life Insurance Company* and *Gladstone Realtors v. Village of Bellwood*, in finding that Respondent has standing to challenge Petitioners' unlawful discriminatory conduct.

Respectfully submitted,

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